

WEIL, GOTSHAL & MANGES LLP  
767 Fifth Avenue  
New York, New York 10153  
Telephone: (212) 310-8000  
Facsimile: (212) 310-8007  
Robert J. Lemons

Attorneys for Lehman Brothers Holdings Inc.  
and Certain of Its Affiliates

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re:

LEHMAN BROTHERS HOLDINGS INC., *et al.*,

Debtors.

Chapter 11

Case No. 08-13555 (JMP)

(Jointly Administered)

**OBJECTION TO CAISSE DES DÉPÔTS ET CONSIGNATIONS' SECOND MOTION  
FOR ENTRY OF AN ORDER TO PERMIT A LATE-FILED PROOF OF CLAIM**

TO THE HONORABLE JAMES M. PECK  
UNITED STATES BANKRUPTCY JUDGE:

Lehman Brothers Special Financing Inc. (“LBSF”) and Lehman Brothers Holdings Inc. (“LBHI”), as Plan Administrator (the “Plan Administrator”) under the Modified Third Amended Joint Chapter 11 Plan of Lehman Brothers Holdings Inc. and Its Affiliated Debtors (the “Plan”),<sup>1</sup> respectfully submit this response in opposition (the “Objection”) to the second motion, dated August 2, 2013, of Caisse des Dépôts et Consignations (“CDC”) for an order permitting CDC to file a late proof of claim pursuant to Bankruptcy Rule 9006(b)(1), and respectfully represent as follows:

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<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Plan.

### **Preliminary Statement**

1. On June 23, 2011, CDC sought authority to file a late claim pursuant to Federal Rule of Bankruptcy Procedure (the “Bankruptcy Rules”) 9006(b)(1) (the “First Motion”).<sup>2</sup> The First Motion came nearly two years after the deadline for filing proofs of claim against any of the Debtors in these chapter 11 cases (the “Bar Date”), notice of which was served by the Debtors at three separate CDC locations, and more than one year after CDC learned that it had failed to file claims before the Bar Date. At a hearing on February 23, 2012 (the “Hearing”), the Court denied the First Motion “without prejudice to further presentations that may be made by CDC concerning its internal processes.” Feb. 23, 2012 Hr’g Tr. at 74:4-5 [ECF No. 25803] (the “February Hearing Transcript”).<sup>3</sup> The Court observed that if CDC could “demonstrate why it is that years went by and they did nothing about a claim they now think is significant,” CDC may be able to show good cause for allowing CDC to file its proof of claim. *Id.* at 74:23-24.<sup>4</sup>

2. On August 2, 2013, a year and a half after the Court Denied the First Motion, CDC filed its *Second Motion for Entry of an Order to Permit a Late-Filed Proof of Claim* (the “Motion”). [ECF No. 39240]. The Motion merely recites the same argument and substantially the same facts relied upon by the First Motion: that CDC’s rights under the Due Process Clause of the Fifth Amendment were violated, despite the fact that it received actual notice of the Bar Date in the manner expressly approved in the Bar Date Order (as defined herein), at three separate locations, and that CDC should be permitted to file a late claim because its nearly two year delay in filing its claim is the result of excusable neglect. CDC has not

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<sup>2</sup> The First Motion is attached hereto as Exhibit 1.

<sup>3</sup> A copy of the February Hearing Transcript is attached hereto as Exhibit 2.

<sup>4</sup> The Court entered a written order denying CDC’s First Motion on March 2, 2012. [ECF No. 25992].

introduced new evidence or otherwise carried its burden to show either that it did not receive actual notice of the Bar Date or that its failure to file timely its claim is the result of excusable neglect. CDC also failed to explain why, after the Court denied the First Motion, it waited a year and a half to file the instant Motion. Accordingly, the Plan Administrator respectfully requests that the Court deny the Motion with prejudice.

### **Jurisdiction**

3. This Court has subject matter jurisdiction to consider and determine this matter pursuant to 28 U.S.C. § 1334 and section 14.1 of the Plan. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

### **Background**

#### **I. The Chapter 11 Cases**

4. On September 15, 2008 and periodically thereafter, the Debtors commenced with this Court voluntary cases under the Bankruptcy Code. The chapter 11 cases have been consolidated for procedural purposes only and are being jointly administered pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure.

5. Lehman Brothers Special Financing Inc. (“LBSF”) included an executory contract with CDC on Schedule G of its amended schedules of assets and liabilities (the “Schedules”), which contract was described in the Schedules as a “Derivatives Master Account.” [ECF No. 3921]. The Schedules set forth the following address for CDC with respect to such executory contract: Caisse des Dépôts et Consignations, 56 rue de Lille, 75356 Paris, Cedex 07, France (the “Scheduled Address”). CDC never filed or communicated any request pursuant to Bankruptcy Rule 2002(g)(1) designating a mailing address other than the Scheduled Address, despite having been listed on the Debtors’ Schedules since June 15, 2009. [ECF No. 3921].

6. By order dated July 2, 2009 (the “Bar Date Order”), the Court established (a) September 22, 2009 at 5:00 p.m. as the Bar Date<sup>5</sup> and (b) October 22, 2009 at 5:00 p.m. as the deadline for the filing of Derivative Questionnaires and Guarantee Questionnaires (each as defined in the Bar Date Order) against the Debtors in these chapter 11 cases. [ECF No. 4271 at 2, 7-8]. The Bar Date Order stated that service of the Bar Date Notice “shall be deemed good, adequate, and sufficient notice if it is served by deposit in the United States mail, first class postage prepaid, on or before July 8 2009 upon . . . all known holders of claims listed on the Schedules at the addresses stated therein.” *Id.* at 10. The Bar Date Order further stated that any holder of a claim against the Debtors that fails to file a proof of claim in accordance with the Bar Date Order would “forever be barred, estopped, and enjoined from asserting such claim against the Debtors (or filing a Proof of Claim with respect thereto) . . . .” *Id.* at 9-10.

7. In addition to providing the Bar Date Notice by mail to all parties known to the Debtors as having potential claims against the Debtors’ estates, the Bar Date Notice was published in The New York Times (International Edition), The Wall Street Journal (International Edition), and The Financial Times.

8. On July 8, 2009, the Debtors provided actual notice of the deadline to file proofs of claim (the “Bar Date Notice”) to, *inter alia*, CDC by first class mail at the Scheduled Address. *See* Corrected Aff. of Service of Herb Baer (the “Baer Affidavit”) [ECF No. 9395]. The Debtors also delivered the Bar Date Notice to CDC at two additional addresses, one in New York and another in Paris. *Id.* Each envelope in which the Bar Date Notice was delivered had written on it a notification that legal documents were enclosed, and a request to direct the Bar Date Notice to the attention of the Addressee, Legal Department or President. *See* First Mot.,

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<sup>5</sup> A separate bar date of November 2, 2009 was established for claims based upon Lehman Program Securities (as defined in the Bar Date Order).

Ex. E. However, CDC's mailroom personnel (who CDC alleges do not speak or read English) marked the Bar Date Notice that was sent to the Scheduled Address as undeliverable and returned it to the Debtors' claims and noticing agent. *Id.* Ex. 1 ¶ 19; Mot. ¶¶ 36-40. CDC did not even open the envelope containing the Bar Date Notice, much less make *any* effort to determine to whom to route it within CDC. Mot. ¶¶ 2, 35-39. Additionally, CDC received and did not return the additional two Bar Date Notices sent by the Debtors. *See* Feb. Hr'g Tr. at 62:4-63:23.

9. On December 6, 2011, the Court approved and entered an order confirming the Plan [ECF No. 23023]. The Plan became effective on March 6, 2012.

## II. CDC's Claim

10. LBSF and CDC entered into that certain 1992 International Swaps and Derivatives Association ("ISDA") Master Agreement dated as of July 29, 1994 (the 1992 ISDA Master Agreement and schedule thereto collectively referred to as, the "Master Agreement").<sup>6</sup> The Master Agreement, which is written entirely in English, is governed by New York law. Master Agreement Part 4(h). LBHI acted as credit support provider for the payment obligations of LBSF under the Master Agreement. Section 12(a) of the Master Agreement stated that any "notice or other communication in respect of this Agreement may be given in any manner set forth below . . . to the address . . . (see the Schedule) and will be deemed effective," in the case of notice by certified or registered mail, "on the date that mail is delivered or its delivery is attempted." Master Agreement § 12(a)(iv). Part 4(a) of the Schedule to the Master Agreement stated that notices or communications, for the purpose of Section 12(a), should be sent to the following address:

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<sup>6</sup> A copy of the Master Agreement is attached as Exhibit A to the First Motion.

Caisse des Dépôts et Consignations, 56 rue de Lille – 75356 Paris  
Cedex 07 – France

Part 4(a) additionally stated that notices should be sent to the attention of “Service FMP 20/Back Office Monétaire.” Nothing in the Master Agreement indicated that mail sent to the specified address without being directed specifically to the attention of “Service FMP 20/Back Office Monétaire” would not even be opened by CDC.

11. On September 19, 2008, through a letter written in English, CDC purported to designate an Early Termination Date under the Master Agreement based on the commencement of LBHI’s chapter 11 case. On September 29, 2008, through another letter written entirely in English, CDC sent LBSF notice of the amount allegedly due to CDC by LBSF on such Early Termination Date.<sup>7</sup> CDC asserts that it is owed an amount not less than \$3,077,434 million under the Master Agreement (the “Claim”).

### **III. The First Motion**

12. CDC filed the First Motion on June 23, 2011. *See* First Mot. CDC claimed it had not received actual notice of the Bar Date because, despite the fact that the Bar Date Notice was sent to the correct address, it was not directed to the attention of “Service FMP 20/Back Office Monétaire” and was accordingly returned to the Debtors by CDC’s own mailroom, allegedly because few CDC employees speak English. Feb. Hr’g Tr. at 64:4-5, 65:10-13; Mot. ¶ 36 n.9. CDC additionally argued that it should be permitted to file its Claim because its failure timely to do so was a result of excusable neglect. The Debtors objected to the First Motion. [ECF No. 19314].

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<sup>7</sup> A copy of CDC’s termination notice and calculation statement is attached as Exhibit A and B, respectively, to the accompanying declaration of Michael Ferraro.

13. The Court denied the First Motion at the Hearing. In denying the First Motion, the Court expressed concern regarding CDC's "general statement that [it] needed notice at a particular address in order to function." Feb. Hr'g Tr. at 74:7-8. Because the Court had not been presented with any evidence regarding the way CDC "processes mail . . . who is responsible for [the Master Agreement], what that individual did or didn't do in connection with monitoring the [Master Agreement] after termination, what if anything was done by that individual to pay attention to the bankruptcy, [or] to consult with bankruptcy counsel," the Court stated that the First Motion would be denied without prejudice to being re-argued if and "when it may be possible to demonstrate good cause." Feb. Hr'g Tr. at 74-75.

### **Argument**

14. At the Hearing, the Court clearly stated that, if CDC could show how under the facts and circumstances of its case its failure timely to file a proof of claim was a result of excusable neglect, it might be able successfully to re-argue its First Motion. The Motion currently before the Court, however, is a duplication of the arguments this Court already rejected, and provides no additional evidence to support the arguments made therein. In fact, the Motion does not even address a number of the questions raised by the Court at the Hearing, such as what efforts, if any, the individuals responsible for the Master Agreement made to monitor the Master Agreement or pay attention to the chapter 11 cases after CDC terminated the Master Agreement. *See* Feb. Hr'g Tr. at 74:9-18. Accordingly, CDC has failed to carry its burden to show either that it did not receive actual notice of the Bar Date, or that its failure timely to file a proof of claim is the result of excusable neglect.<sup>8</sup>

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<sup>8</sup> To the extent not expressly made in this Objection, all arguments advanced in the Debtors' Objection to the First Motion are incorporated herein. [ECF No.19314].

## I. CDC Received Actual Notice of the Bar Date at Three Addresses

15. The Bar Date Order expressly stated that service of the Bar Date Notice in the manner described therein “shall be deemed good, adequate, and sufficient notice.” Bar Date Order at 10. In accordance with the Bar Date Order, the Debtors served the Bar Date Notice on CDC at the Scheduled Address, as well as two additional addresses. CDC argues, however, that such service was constitutionally deficient because the Bar Date Notice sent to the Scheduled Address was not sent to the attention of “Service FMP 20/Back Office Monétaire.” CDC is mistaken. First, the Debtors provided CDC with actual notice of the Bar Date that did not deprive CDC of its due process rights. Second, the Court expressly approved the manner of notice employed by the Debtors to provide CDC with actual notice of the Bar Date. Third, the alleged inability of CDC’s employees to read English does not invalidate the Bar Date Notices delivered to CDC.

16. “An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice, reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). Additionally, Bankruptcy Rule 2002(g)(2) provides that when notice is served on a creditor by mail and that creditor has not filed a request designating a mailing address, then notice shall be mailed “to the address shown on the list of creditors or schedule of liabilities, whichever is filed later.” FED. R. BANKR. P. 2002(g)(2).

17. The Bar Date Notice provided CDC with actual notice as required by the Due Process Clause of the Fifth Amendment. There is no requirement “that one identify the specific division of a company on a bankruptcy notice. Nor is it required by due process. Once

delivered, it is the responsibility of the creditor to distribute the notice to the appropriate party within its organization.” *Nat'l Union Fire Ins. Co. of Pittsburgh v. Broadhead*, 155 B.R. 856, 858-89 (S.D.N.Y. 1993) (citing *In re Drexel Burnham Lambert Grp. Inc.*, 129 B.R. 22, 24 (S.D.N.Y. 1991)). In *Broadhead*, the defendant filed for bankruptcy and listed the plaintiff on its list of creditors, but failed to specify to whose attention notices should be sent—a clear violation of the contract giving rise to the plaintiff’s claim. The defendant obtained a discharge, and the plaintiff commenced a separate action seeking damages under the contract. The court expressly held that the notice sent to the plaintiff complied with the Bankruptcy Code and with due process. 155 B.R. at 858-59.<sup>9</sup> See also *Dependable Ins. Co. v. Horton (In re Horton)*, 149 B.R. 49, 59-60 (Bankr. S.D.N.Y. 1992) (notice complied with due process where it was sent to correct PO Box, but omitted the street address, and despite the fact that it allegedly did not enable the creditor’s “mailroom personnel to determine to whom the [n]otice should have been forwarded”).<sup>10</sup>

18. CDC’s argument that the Debtors’ failure to send the Bar Date Notice to the attention “Service FMP 20/Back Office Monétaire” is the same argument that was rejected by this Court, and it is the same argument that was rejected by the courts in *Broadhead* and

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<sup>9</sup> Because the notice did not comply with the “unambiguous[]” requirements of the notice provision of the contract at issue, the court gave the plaintiff the opportunity to show that its debt was either nondischargeable or that it could have affected the defendant’s bankruptcy proceeding to its advantage, notwithstanding the discharge. *Id.* at 859. The facts of this case are materially different. First, the plaintiff in *Broadhead* denied that it had received “any notice.” *Id.* at 857. Here, CDC *actually received* all three notices sent to it, but returned the notice sent to the Scheduled Address. Further, the Bar Date Order specifically approved the manner in which the Bar Date Notice was provided to CDC. Bar Date Order at 10. In *Broadhead*, there was no such order.

<sup>10</sup> *National Union Fire Insurance Co. of Pittsburgh v. Main (In re Main)*, 111 B.R. 535, 538 (Bankr. W.D. Pa. 1990), relied upon by CDC in the Motion, is factually distinguishable. See Mot. ¶¶ 62-66. There, the clerk of the court sent the plaintiff only one notice of the bankruptcy petition to the correct address, but failed to direct the notice to a particular department. Further, there was no evidence that any notice was ever received. *Id.* Further, there was no court order in place specifically approving the notice that was sent by the clerk, as there is in this case. Last, there was specific evidence of the size, magnitude, and complexity of operations of the plaintiff, which evidence is notably lacking in this case. *Id.* at 539.

*Horton*. Further, it is uncontested that CDC received the Bar Date Notice at the Scheduled Address, as required by the Bar Date Order, and at two additional addresses. CDC admits that it did not even open the envelope containing the Bar Date Notice or make any effort to route it within CDC. Mot. ¶¶ 35-40. Nevertheless, CDC insists that due process required the Bar Date Notice sent to the Scheduled Address to be directed to “Service FMP 20/Back Office Monétaire.” CDC’s arguments are unsupported by applicable law, and should be rejected by this Court for the second time.

19. Second, the Bar Date Order unambiguously stated that service of the Bar Date Notice by “deposit in the United States mail, first class postage prepaid, on or before July 8, 2009” at the Scheduled Address would be “good, adequate, and sufficient notice.” Bar Date Order at 10. On July 8, 2009, the Debtors served CDC with the Bar Date Notice at the Scheduled Address, as required by the Bar Date Order, as well as at two different addresses. [ECF No. 4349]. The Debtors complied, to the letter, with the directives of the Bar Date Order; CDC’s argument that the Master Agreement’s notice provision supersedes the requirements to comport with the requirements of due process, the requirements of the Bankruptcy Code, and the requirements of Bar Date Order are unavailing.

20. Last, CDC’s reliance on the argument that its employees’ alleged general inability to speak or read English justifies the fact that it never attempted to direct the Bar Date Notice sent to the Scheduled Address to the proper department must fail. *See* Mot. ¶¶ 36, 39. CDC’s the conclusory assertion that “very few CDC employees speak English” is belied by the fact that the Master Agreement is written entirely in English, and that all correspondence with respect to the Master Agreement was in English, including CDC’s own letters purporting to terminate the Master Agreement and to notify LBHI of the amount CDC believes it is owed. *Id.*

¶ 36 n.9; Ferraro Decl. Exs. A & B. Additionally, CDC agreed that the Master Agreement should be governed by the laws of New York State, an English speaking jurisdiction. Now, four years after the Bar Date, CDC should not be permitted to use bare assertions of language barrier as justification for its own failure to open, much less route properly, one of the three Bar Date Notices it actually received.

## **II. CDC's Neglect to File Timely a Proof of Claim Is Not Excusable**

21. LBHI commenced its chapter 11 case on September 15, 2008. CDC purported to designate an Early Termination Date under the Master Agreement based on the commencement of LBHI's chapter 11 case on September 19, 2008. On October 3, 2008, LBSF commenced its chapter 11 case. On July 8, 2009, the Debtors provided CDC with actual notice of the Bar Date at three separate addresses. The Bar Date passed on September 22, 2009.

22. Almost two years later—and more than one year after CDC was aware that it missed the Bar Date—CDC filed the First Motion. Nearly a year and a half after the Court denied the First Motion, CDC filed this Motion. Without offering any new evidence other than a few statements relating to CDC's internal organization and inefficiencies—and without addressing many of the issues the Court found lacking in the First Motion—CDC asks this Court to find that its failure timely to file a proof of claim is the result of excusable neglect. The Plan Administrator submits that nothing has been added to the First Motion that could support a finding of excusable neglect, and respectfully requests that the Court deny the Motion.

23. Determining whether neglect of a deadline is excusable is an equitable determination that requires consideration of all relevant circumstances surrounding the failure to file a claim on time, including “the danger of prejudice to the debtor, the length of the delay and its potential impact on judicial proceedings, the reason for the delay, including whether it was

within the reasonable control of the movant, and whether the movant acted in good faith.”

*Pioneer Inv. Serv. Co. v. Brunswick Assocs. L.P.*, 507 U.S. 380, 395 (1993). In applying this test, the Second Circuit focuses on the third Pioneer factor—the reason for the delay in filing, including whether the cause of such delay was within the reasonable control of the movant—as the most critical. *Midland Cogeneration Venture Ltd. P’ship v. Enron Corp. (In re Enron Corp.)*, 419 F.3d 115, 122-24 (2d Cir. 2005). Further, “[t]he burden of proving excusable neglect lies with the late-claimant.” *Id.* at 121.

a. CDC Has Provided No Evidence to Support an Extraordinary Four-Year Delay

24. As this Court has previously noted, the primary reason for the delay relied upon by CDC is its own internal inability to process mail.<sup>11</sup> However, sophisticated institutions like CDC “bear[] responsibility for having systems in place to ensure that legal notice and other communications reach appropriate personnel.” *Drexel Burnham*, 129 B.R. at 25. CDC bears responsibility for its inability to route mail properly, and this Court should not allow CDC to deflect its responsibility for failing to file its proof of claim on time onto the Debtors. CDC’s internal mail processing, and its decision to reject receipt of the Bar Date notice at one location and ignore it at two other locations, is a factor that is entirely within CDC’s control that cannot ground a finding of excusable neglect.

25. CDC also argues that it did not learn that the Bar Date passed until May 2010. Mot. ¶ 102. Even if this were true (which it is not, because CDC had actual and constructive notice for all the reasons articulated above), this argument only serves to undermine CDC’s argument that its delay was not within its reasonable control, as a year of unexplained

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<sup>11</sup> See Feb. Hr’g Tr. at 74:6-18 (THE COURT: “. . . This appears to be a situation of complete and absolute neglect and inexcusable inefficiency.”).

delay elapsed before CDC filed the First Motion. Accordingly, to the extent that this Court does not hold CDC accountable for its inefficient mailroom procedures, and notwithstanding the fact that CDC actually received notice at three locations, CDC has not shown why its delay between May 2010 and June 23, 2011 was not entirely within its control. And now, CDC has provided no excuse for why it took more than a year and a half to file the Motion, which contains only a handful of arguably new factual assertions, none of which support CDC's argument that its failure timely to file a proof of claim is the result of excusable neglect, and does not even address all of the issues raised by the Court at the Hearing.

26. This Court denied the First Motion without prejudice so that CDC could have an opportunity to present evidence relating to its internal processes. Feb. Hr'g Tr. at 74:4-5. The Motion currently before the Court does nothing to cure the defects noted by the Court at the Hearing. Rather, it only highlights the fact that CDC's neglect was not excusable at all. Accordingly, the Plan Administrator respectfully submits that CDC has not carried its burden to show that the reason for CDC's delay suggests that CDC's neglect of the Bar Date is excusable.

b. The Length of CDC's Delay Is Inexcusably Long

27. CDC first sought authority to file a late claim one year and nine months after the Bar Date. CDC states in its Motion that it learned that the Bar Date passed some time prior to May 2010. Mot. ¶ 102. CDC further states that it sought the assistance of its current counsel in January 2011. Mot. ¶ 113. These mere representations of counsel only serve to demonstrate the inexcusable nature of CDC's delay: they establish that CDC waited more than one year after purportedly learning that the Bar Date passed, and more than five months after contacting its current counsel, to seek authority to file a late claim. CDC waited an additional

year and a half after the denial of its First Motion to file the instant Motion. CDC's cumulative delay of nearly four years in seeking authority to file a late claim is simply too long.

28. CDC suggests that its delay between the denial of the First Motion and the filing of the instant Motion may be attributed to its conducting an "investigation to properly respond to this Court's inquiries." Mot. ¶ 114. Notwithstanding the fact that CDC has not submitted any evidence to support this assertion, the Plan Administrator respectfully submits that CDC's professed excuse is not reasonable given the length of the delay at issue and the paltry supplementation to the First Motion's factual assertions.

c. Granting CDC's Motion Would Cause Substantial Prejudice to the Plan Administrator

29. Determining whether the Plan Administrator will be prejudiced by allowing claimants to file claims after the bar date involves consideration of more than the single claim at issue, but "the impact of permitting exceptions that risk opening the floodgates." Feb. Hr'g Tr. at 73:22-23. Here, CDC neglected to file a proof of claim notwithstanding the fact that it received the Bar Date Notice at three separate addresses. Allowing CDC to file a proof of claim, four years after the Bar Date, risks opening the floodgates for all other similarly situated parties—*i.e.* parties that indefensibly ignored the Bar Date that now wish to file proofs of claim. The arguments advanced by CDC through its Motion ignore this consideration entirely. Accordingly, the Plan Administrator submits that CDC cannot carry its burden to show excusable neglect.

d. Good Faith

30. The Debtors have no evidence that CDC acted in bad faith when it filed the Motion. This factor typically weighs in favor of the party moving to file a late claim and does not outweigh the other *Pioneer* factors that weigh in the Plan Administrator's favor,

particularly whether the reason for the delay was within the control of the moving party, discussed above, which the Second Circuit has deemed to be the most critical in the determining of whether a movant's neglect is excusable. *See Enron*, 419 F.3d at 122-23. Accordingly, the Motion should be denied.

### **Conclusion**

31. CDC received the Bar Date Notice at three separate addresses well in advance of the Bar Date, yet failed to even open the Bar Date Notice or file a claim prior to the Bar Date, and waited approximately two years after the Bar Date to request the Court's permission to file a late claim, and waited almost another year and a half to file a new motion requesting authorization to file a late claim. CDC argues now, as it did nearly a year and a half ago, that the Master Agreement's notice provision enlarges CDC's rights under the Due Process Clause of the Fifth Amendment, and that its lengthy delay was entirely due to the fact that one of the three Bar Date Notices that the Debtors sent CDC was not sent to the attention of a specific department. Briefly, the Motion currently before the Court corrects none of the infirmities that doomed the First Motion, and should be denied for the reasons stated herein, and for the same reasons stated by the Court at the Hearing, but with prejudice this time so that that Plan Administrator need not waste more funds of the estates' creditors responding to additional motions by CDC.

### **Reservation of Rights**

32. In the event that the Court determines to grant the relief requested in the Motion, the Plan Administrator reserves all of its rights to object to the validity and amount of any claims that may be filed by CDC.

33. The Plan Administrator reserves the right to conduct discovery as to the matters raised in the Motion and to supplement this filing as a result thereof.

**WHEREFORE** the Plan Administrator respectfully requests the Court deny the Motion with prejudice and grant such other and further relief as is just and proper.

Dated: September 19, 2013  
New York, New York

/s/ Robert J. Lemons  
Robert J. Lemons

WEIL, GOTSHAL & MANGES LLP  
767 Fifth Avenue  
New York, New York 10153  
Telephone: (212) 310-8000  
Facsimile: (212) 310-8007

Attorneys for Lehman Brothers Holdings Inc.  
and Certain of Its Affiliates

## **Exhibit 1**

**SILVERMANACAMPORA LLP**

Counsel to Caisse des Dépôts et Consignations,  
100 Jericho Quadrangle, Suite 300  
Jericho, New York 11753  
(516) 479-6300  
Ronald J. Friedman  
Jay S. Hellman  
Brett S. Silverman

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re

Chapter 11

LEHMAN BROTHERS HOLDING INC., *et al.*

Case No. 08-13555 (JMP)

Debtors.

(Jointly Administered)

**CAISSE DES DÉPÔTS ET CONSIGNATIONS' MOTION FOR ENTRY OF AN  
ORDER TO PERMIT A LATE-FILED CLAIM PURSUANT  
TO FEDERAL RULE OF BANKRUPTCY PROCEDURE 9006(b)(1)**

Caisse des Dépôts et Consignations (“CDC”), by and through its undersigned counsel, seeks the entry of an order to permit a late-filed claim against Lehman Brothers Special Financing Inc. (“LBSF,” and together with its jointly administered co-debtors, “Lehman” or the “Debtors”) in accordance with due process under the United States Constitution and Federal Rule of Bankruptcy Procedure 9006(b)(1), with such claim being deemed timely filed (the “Motion”), and respectfully represents as follows:

**PRELIMINARY STATEMENT**

1. By this motion, CDC respectfully requests that this Court enter an Order extending CDC’s time to file a proof of claim and Questionnaires, based upon excusable neglect, pursuant to Bankruptcy Rule 9006(b)(1).

2. This motion seeks to correct the due process violation that would occur if the Debtors were permitted to discharge the claim of a known creditor who did not receive notice of the Bar Date or Questionnaire Deadlines. CDC holds a claim against LBSF in the amount of \$3,077,434.00 (€ 2,101,500), plus accrued interest, costs and expenses (the “Claim”), arising

out of a certain ISDA Master Agreement (the "Master Agreement") between CDC and LBSF.<sup>1</sup>

3. LBSF was undeniably aware of the Claim since it listed CDC as a party to an unexpired executory contract on Schedule "G" of its petition with reference to "Derivative Master Account Number 080494CDDC". Despite the fact that this information was readily ascertainable, LBSF's noticing agent, Epiq Bankruptcy Solutions, LLC ("Epiq"), did not send the Bar Date Notice (defined below) to the precise address specifically required by in the Master Agreement.<sup>2</sup> Consequently, the Bar Date Notice was returned to Epiq marked "undeliverable." Inexplicably, Epiq did not make any further attempts to provide CDC with the Bar Date Notice and, consequently, CDC never filed a proof of claim.

4. One of the key principals of bankruptcy is that known creditors be provided with actual notice of important dates and deadlines so that they can participate in the reorganization process and guard against the unjustified discharge of their claims. This Motion is made to prevent the injustice that would result from allowing the Debtors to escape liability under the Claim, despite their failure to properly serve CDC with the Bar Date Notice.

5. Under the circumstances, CDC respectfully requests that this Court enter the annexed, proposed order permitting CDC to file a proof of claim pursuant to Federal Rule of Bankruptcy Procedure 9006(b)(1), and that upon such filing, the proof of claim shall be deemed timely filed.

#### **BACKGROUND**

6. CDC is a public institution with special status under the French Parliament's

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<sup>1</sup> The amount was calculated by multiplying the value of the Claim in Euros, before accrued interest, costs and expenses, based upon the exchange rate as of September 25, 2008, the Early Termination Date of the Master Agreement, designated in a letter from CDC noticing LBSF of the default under the Master Agreement, which rate was then \$1.4643987649 per €1.00.

<sup>2</sup> As more fully set forth herein, CDC is a large institution with numerous offices spread throughout France, and more than ten (10) offices in Paris alone. Furthermore, CDC employs more than 73,000 people and receives more than 1,000 pieces of mail per day. Understandably, and on account of the very departmentalized nature of CDC, notification processes, such as the notice required in the Master Agreement, are set up specifically designed to remedy notice issues that plague this very large entity.

supervision and guarantee.<sup>3</sup>

7. CDC was formed in 1816 for the purpose of safeguarding funds (during various financial crises and while the French State faced a significant war debt) including the pension funds and retirement accounts of France's civil servants. Thereafter, in the same spirit of confidence and security, many other missions of public interest have been entrusted to CDC.

8. On July 29, 1994, CDC and LBSF entered into the Master Agreement, which was to govern certain future transactions by and between CDC and LBSF. (A copy of the Master Agreement is annexed as Exhibit "A" to the Declaration of Olivier Ritz dated May 31, 2011 (the "Ritz Declaration"), which has been annexed hereto as **Exhibit "1"**.)

9. In connection with the Master Agreement, LBSF also executed a Guarantee of Lehman Brothers Holdings Inc. ("Guarantee") and a Master Pledge Agreement ("Pledge Agreement"), dated November 4, 1994, whereby LBSF is the "Pledgor" to CDC as "Pledgee." (Copies of the Guarantee and the Pledge Agreement have been annexed to the Ritz Declaration as Exhibits "B" and "C" respectively.)

10. CDC and its subsidiaries employ approximately 73,500 people and manage 48 different pension programs for French workers. CDC is a large institution with numerous offices spread throughout France, including numerous office locations within the city of Paris. CDC averages more than 1,000 pieces of mail per day.

11. Due to the massive size and the expansive, non-contiguous layout of CDC's offices throughout Paris, CDC always includes **specific** noticing provisions in all of its contracts and transactional documents which, if not adhered to, can cause notice to go undelivered to its intended party.

12. The Master Agreement was no exception. CDC included a specific noticing

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<sup>3</sup> CDC is a public-law institution and, together with its subsidiaries, they form a group of public interests, dedicated to the economic development of France. CDC is placed under the supervision of the French Parliament pursuant to article L. 518-2 of the French Monetary and Financial Code.

provision to ensure that any notifications were delivered to the proper departments. Such a specific noticing provision was included in Part 4(a) of the Schedule (“Schedule”) to the Master Agreement, which requires that all communications to CDC in connection with the Master Agreement be directed to:

Caisse des Dépôts et Consignations  
56 rue de Lille  
75356 Paris Cedex-France  
**Attention: Service FMP 20/Back Office Monétaire<sup>4</sup>**

13. On September 15, 2008, Lehman Brothers Holdings Inc. (“LBHI”) and certain of its subsidiaries filed voluntary petitions for relief under chapter 11 of title 11, United States Code (the “Bankruptcy Code”). LBSF filed a voluntary petition under chapter 11 of the Bankruptcy Code on October 3, 2008.

14. Pursuant to section 5(a)(vii) of the Master Agreement, it is an event of default if a party to the agreement “institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors’ rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition (A) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation or (B) is not dismissed, discharged, stayed or restrained in each case within 30 days of the institution or presentation thereof.” In addition, the bankruptcy of LBHI (as “Credit Support Provider” of LBSF under the provisions of Section 5(a)(vi) of the Master Agreement) is a “Cross Default” under the Master

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<sup>4</sup> Section 13(c) of the Master Agreement contains noticing procedures for direct disputes between the parties to the Master Agreement and for any business transacted through CDC Capital, Inc. (“CDC Capital”). CDC Capital was an entity through which the CDC transacted certain business. In or about 2007, however, CDC sold all of its interests in CDC Capital.

Although CDC Capital was no longer affiliated with CDC at the time of the bankruptcy filing, the Bar Date Notice was apparently sent in any event to CDC Capital. Serving CDC Capital, however, was improper under the terms of the Master Agreement, because no business relating to the Claim was conducted through CDC Capital and the Bar Date does not constitute a “dispute” between the parties to the Master Agreement.

Agreement. Upon an event of default (including a “Cross Default”), the Master Agreement provides that “the other party (the “Non-defaulting Party”) may, by not more than 20 days notice to the Defaulting Party specifying the relevant Event of Default, designate a day not earlier than the day such notice is effective as an Early Termination Date in respect of all outstanding Transactions.”

15. On September 19, 2008, CDC sent LBSF notice of its default under the Master Agreement as a result of the bankruptcy filing of LBHI, an affiliate of LBSF, and designated September 25, 2008, as the Early Termination Date for all outstanding transactions. LBSF received the letter on September 24, 2008.

16. On September 29, 2008, CDC sent LBSF notice of the amount due on the Early Termination Date, which notice was received by LBSF on October 1, 2008.

17. Pursuant to CDC’s rights upon termination of the Master Agreement, the Claim was calculated pursuant to Section 6(d)(ii) of the Master Agreement, which is the principal balance of \$3,023,035.26 (€2,101,500), together with interest accrued thereon from and including the Early Termination Date to the date of payment at the Applicable Rate.<sup>5</sup>

18. CDC is a known creditor of LBSF because the Master Agreement is listed on Schedule “G” of the Debtors’ chapter 11 petitions as an unexpired executory derivative contract with reference to Master Derivative Account Number 080494CDDC. (A copy of the Debtors’ Schedule “G” is annexed to the Ritz Declaration as Exhibit “D”.)

19. By Order dated July 2, 2009, this Court established September 22, 2009 (the “Bar Date”) as the deadline for filing proofs of claims based upon pre-petition claims against the Debtors (the “Bar Date Order”). In addition to the official proof of claim form, the Order also required the submission by October 22, 2009 of a Derivative Questionnaire for claims based on

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<sup>5</sup> Pursuant to Section 14 of the Master Agreement, the “Applicable Rate” for this purpose is the “Default Rate”, which is CDC’s cost of funds plus 1% per annum. From the Early Termination Date to the date of the notice, CDC’s cost of funds was 4.50% and, therefore, the Applicable Rate during such period was 4.285% per annum plus 21.5 basis points. CDC reserved its right to apply a different cost of funds for the purpose of calculating the Applicable Rate from the date of the notice.

derivative contracts and a Guarantee Questionnaire (collectively "Questionnaires") for claims based on a guarantee (the "Questionnaire Deadline").

20. On March 15, 2010 the Debtors filed a Joint Chapter 11 Plan (the "Plan") and Disclosure Statement and, on April 14, 2010, the Debtors filed a revised version of the Plan.

21. On May 5, 2010, CDC received an e-mail from LBHI estate's director, Mr. Dermot Doyle, purporting to have authority to settle CDC's claim against LBSF and asking if CDC submitted a proof of claim. On May 10, 2010, CDC telephoned Mr. Doyle to tell him that it seemed to be that, so far, no proof of claim had been filed and to ask him if any notice had been sent to CDC to inform CDC of the necessity of such proof of claim filing. Mr. Doyle answered that he would get in touch with the LBHI estate's lawyers.

22. After conducting an internal investigation, CDC discovered that the Bar Date had passed and contacted LBSF, who provided CDC with a color scan of an unopened envelope which allegedly contained the Bar Date Notice, which was errantly addressed as follows:

CAISSE DES DEPOTS ET CONSIGN ATIONS [SIC]  
56 RUE DE LILLE  
75356 PARIS  
CEDEX 07  
FRANCE

(A copy of the returned envelope holding the Bar Date Notice is annexed to the Ritz Declaration as Exhibit "E".)

23. As mentioned above, despite being mailed to the proper street address, the Bar Date Notice was not **specifically** addressed to **Service FMP 20/Back Office Monétaire**, as required by the Master Agreement. As a result, because the Bar Date Notice could not be routed to the correct personnel at CDC, it was marked to be returned to the sender as undeliverable. Accordingly, CDC was not aware of the Bar Date, and thus, CDC did not file a proof of claim.

24. Although CDC had a general understanding that the Debtors had filed for bankruptcy protection, CDC never received notice of the Bar Date Order because such notice

was improperly addressed by Epiq, causing the notice to be returned as undeliverable.

25. As a result of CDC's justified reliance on the notice provisions in the Master Agreement, as well as its unfamiliarity with bankruptcy proceedings in the United States, CDC was not aware that it did not receive notice of the critical Bar Date, nor was it aware that it should have received such notice.

26. Although CDC is a large institution, it does very little business within the United States or with entities based in the United States.

27. CDC does business almost exclusively in the French language. Very few CDC employees speak English. In fact, by French law n° 94-665 dated August 4, 1994, relating to the use of French language ("relative à l'emploi de la langue française") all contracts to which CDC is a party must be written in French unless certain exceptions are met.

28. Consequently, CDC has virtually no familiarity with the bankruptcy laws and procedures in the United States.

29. CDC is a massive, complex organization with numerous offices distributed throughout France and it is comprised of countless discrete entities and departments. In Paris alone, CDC occupies more than approximately ten buildings distributed over a large geographical area, each of them accommodating many departments. As mentioned above, the average mail volume is more than 1,000 pieces per day. Moreover, CDC's mail and other parcels are delivered to a central location. Once received, the mail is then routed to the proper departments, in the various locations throughout France. If the mail is not addressed properly, which includes specifying the relevant department or personnel to receive the mail, such mail is returned to sender as undeliverable. Accordingly, it is **essential** that mail be addressed to the proper department and personnel within CDC so that it can be delivered accurately. Therefore, CDC necessarily includes very specific noticing provisions in all of its contracts, such as section 12(a) of the Master Agreement and 4(a) of the Schedule thereto.

30. Because the Bar Date Notice was not properly directed to the attention of

**"Service FMP 20/Back Office Monétaire,"** the CDC mail department that received the envelope could not determine how to properly route it and, therefore, refused delivery.

31. Although Epiq received the returned mail it appears that, no further attempt was made to verify CDC's address or to attempt to resend the Bar Date Notice.

32. After conducting an internal investigation once Mr. Doyle raised the Bar Date issues, CDC contacted American counsel to gain an understanding of the situation.

33. After discussions with American counsel and continued investigations into the facts that caused CDC to miss the Bar Date, CDC retained American counsel to file the instant Motion.

34. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157(a) and 1334, as well as the Standing Order of Reference from the United States District Court for the Southern District of New York signed by Acting Chief Judge Robert J. Ward dated July 10, 1984. This motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicate for the relief requested herein is Bankruptcy Rule 9006(b)(1).

#### **REQUESTED RELIEF**

35. By this motion, CDC respectfully requests that this Court enter an order extending CDC's time to file a proof of claim and Questionnaires pursuant to Bankruptcy Rule 9006(b)(1), and deem such claim as timely filed.

#### **CDC's Claim Should Not Be Time Barred Because It Did Not Receive Notice Of The Bar Date**

36. CDC should be permitted to file a late claim due to the Debtors' failure to provide proper notice of the Bar Date as required by the Master Agreement.

37. Due Process mandates that a known creditor receive actual notice of a bar date before its claim can be discharged in a debtor's bankruptcy. *In re Enron Corp.*, No. 01-16034 (AJG), 2003 Bankr. LEXIS 2110 (Bankr. S.D.N.Y. July 30, 2003) (allowing late-filed proof of claim for excusable neglect despite finding that creditor received notice of the bar date); *In re*

*Thomson McKinnon Sec., Inc.* 159 B.R. 146 (Bankr. S.D.N.Y. 1993) (allowing a creditor to file a proof of claim more than two and one-half years after the bar date where the creditor did not receive actual notice of the bar date); *In re Waterman S.S. Corp.*, 157 B.R. 220, 222 (Bankr. S.D.N.Y.) (holding that “[w]hen the bar date was sent out, all . . . known to be actual or potential claimants . . . were entitled to actual personal notice.”); *Adam Glass Svc., Inc. v. Federated Dep’t. Stores*, 173 B.R. 840 (E.D.N.Y. 1994) (holding that claim of unscheduled creditor who did not receive notice of the bar date and did not file a proof of claim was not discharged by debtor’s confirmed plan, despite the creditor’s knowledge of the pending bankruptcy). “The statutory command for notice embodies a basic principle of justice—that a reasonable opportunity to be heard must precede judicial denial of a party’s claimed rights.” *City of New York v. New York, New Haven & Hartford R.R. Co.*, 344 U.S. 293, 297 (1953).

38. Furthermore, “[a]ctual knowledge of the filing of a bankruptcy petition does not negate the statutory notice requirements nor does it place a duty on creditors to inquire regarding time limitations for filing claims.” *In re Spring Valley Farms, Inc.*, 85 B.R. 593, 595 (N.D. Ala. 1988) (emphasis added) (citing *New York, New Haven & Hartford R.R. Co.*, 344 U.S. at 297); *Adam Glass Svc., Inc. v. Federated Dep’t. Stores*, 173 B.R. at 843 ; *In re Joseph B. Dahlkeyer Co., Inc.*, 170 B.R. 853, 861 (Bankr. W.D. Pa. 1994); *In re Uiterwyk Corp.*, 105 B.R. 103, 105 (Bankr. M.D. Fla.). Thus “claims of creditors who were known to debtor and who had actual knowledge of the chapter 11 proceeding, but who did not receive the required notice of the bar date, [are] not discharged upon plan confirmation.” *In re Joseph B. Dahlkeyer Co., Inc.*, 170 B.R. at 861.

39. Court’s have held that, where an address is slightly incorrect, no presumption of receipt can arise unless “there is sufficient evidence from which to presume that the addressee nonetheless received the incorrectly addressed notice.” *In re Randbre Corp.*, 66 B.R. 482, 486 (Bankr. S.D.N.Y. 1986) (permitting vacatur of an order expunging a creditor’s claim where the address on the notice for the motion to expunge was mailed contained an extra zero). Here, the

address was more than slightly incorrect; it completely omitted the routing information that was specified under the Master Agreement and critical to delivery within CDC-a large, public institution. Furthermore, even assuming, *arguendo*, that the Bar Date Notice was only slightly mis-addressed, no presumption of receipt can arise because there is conclusive evidence that CDC never received it, because the Bar Date Notice could not be routed by CDC's mail department. See Ritz Declaration.

40. Here, there is no doubt that CDC was a known creditor of LBSF who did not receive notice of the Bar Date before its expiration. Thus, it would be contrary to fundamental notions of fairness and due process to disallow CDC's claim without an opportunity to participate in the reorganization process. Furthermore, despite CDC's knowledge of the Lehman bankruptcy filing generally, it had no duty to independently inquire about the claims Bar Date and was legally justified in relying on the Debtors' obligation to provide notice thereof.

41. In *In re Joseph B. Dahlkemper Co.*, *supra*, a creditor did not receive notice of the bar date because the debtor listed the address of its predecessor-in-interest on the schedules and mailed notice of the bar date to that address. *Dahlkemper*, 170 B.R. at 856-57. After the creditor was granted leave to file a proof of claim, the Debtor objected to the claim on several grounds, including that it was time-barred. *Id.* at 858. In addressing the timeliness argument, the court noted that the claims of known creditors in chapter 11 cases could not be discharged unless the creditor had received actual notice of the bar date. *Id.* at 861. However, rather than except this claim from the debtor's discharge, the court held that "no portion of [the creditor's] proof of claim [was] time-barred." *Id.*

42. Similarly, in *In re Uiterwyk Corp.*, 105 B.R. 103 (Bankr. M.D. Fla. 1989), creditors of the debtor were neither listed on the debtor's schedules nor sent actual notice of the bankruptcy filing or the bar date. Despite the debtor's allegations that the creditors were well aware of the bankruptcy, the court explained "it is clear that under controlling case law, the concept of due process compels the conclusion that even if a creditor is aware of the pendency

of a bankruptcy case, it is entitled to receive notice of the bar date to file proof of claims.” *Id.* at 105. Thus, the court concluded that:

the [creditors] were clearly entitled to be given formal notice of these proceedings, especially the bar date fixed by the Court. For this reason, they should be allowed to file their proof of claim and to deny their right to file a proof of claim would be denial of due process to which they are entitled.

*Id.* (citations omitted).

43. Here, as in *Dahlkemper* and *Uiterwyk*, CDC was a known creditor of LBSF who did not receive notice of the Bar Date. Despite LBSF’s knowledge that the Bar Date Notice mailed to CDC was returned as undeliverable, no further attempt was made to provide the notice that due process mandates. Consequently, CDC respectfully requests that it be permitted to file a proof of claim and that its proof of claim be deemed timely filed.

CDC Should Be Granted An Extension Of Time  
To File A Proof Of Claim For Excusable Neglect

44. In the alternative, CDC respectfully submits that the time for CDC to file a proof of claim should be enlarged pursuant to Rule 9006(b)(1) because its failure to timely file a proof of claim was the result of excusable neglect.

45. Rule 9006(b)(1) empowers the court, in its discretion, to extend a deadline “where the failure to act was the result of excusable neglect.” Fed. R. Bankr. P. 9006(b). The United States Supreme Court has construed the phrase “excusable neglect” as used in Rule 9006 and concluded that “Congress plainly contemplated that the courts would be permitted, where appropriate, to accept late filings caused by inadvertence, mistake, or carelessness, as well as by intervening circumstances beyond the party’s control.” *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. Partnership*, 507 U.S. 380, 388 (1993). The Court added that “what sorts of neglect will be considered ‘excusable,’ . . . is at bottom an equitable [determination], taking account of all relevant circumstances surrounding the party’s omission.” *Id.* at 395. Some relevant factors (but by no means exclusive) include “[1] the danger of prejudice to the debtor, [2] the length of the delay and its potential impact on judicial proceedings, [3] the reason

for the delay, including whether it was within the reasonable control of the movant, and [4] whether the movant acted in good faith." *Id.* at 395.

46. Not all factors, however, need favor the moving party. *In re Enron Corp.*, No. 01-16034 (AJG), 2003 Bankr. LEXIS 2110, at \*11 (Bankr. S.D.N.Y. 2003). "[N]o single circumstance controls, nor is a court to simply proceed down a checklist ticking off traits. Instead, courts are to look for a synergy of several factors that conspire to push the analysis one way or the other." *Id.* at \*12 (quotation and citation omitted).

#### Reason For The Delay

47. This Motion is critically distinguishable from those addressed in the Court's Opinion of May 20, 2010, in that none of the claimants addressed in this Court's Opinion contested actual notice of the Bar Date, a point this Court recognized. *In re Lehman Brothers Holdings Inc.*, 433 B.R. at 119, 122, 127 n.31. CDC's sole reason for missing the Bar Date is a lack of notice. Additionally, CDC's status as a foreign creditor with no familiarity with American bankruptcy laws or procedures further excuses any delay because CDC did not have the background to know of or to investigate the Bar Date. CDC respectfully submits that because it did not receive actual notice of the Bar Date — the first factor of the *Pioneer* analysis weighs overwhelmingly in its favor.

48. Furthermore, in the two prior instances when this Court has granted motions to file proofs of claim after the Bar Date, the Court found that the "delay was the result of justifiable confusion over the application of the bar date to their particular claims." *Lehman*, 433 B.R. at 127. CDC respectfully submits that, if confusion over application of the bar dates constitutes excusable neglect, then complete lack of notice of the Bar Date must also form a sufficient basis for excusable neglect.

#### Prejudice To The Estates

49. There is no danger that granting this Motion would prejudice the Debtors' estates. As explained herein, this Motion presents exceptionally narrow circumstances where a

known creditor did not receive actual notice of the Bar Date due to an improperly addressed notice. The Debtors were on actual notice of CDC's claim, as evidenced by the fact that LBSF listed CDC on its Schedule "G" of unexpired, executory derivatives contracts. There is no danger that granting the relief sought herein will open the floodgates to other similarly situated creditors. It is significant that, as the Court previously observed, of the seven motions addressed in its May 20, 2010 Opinion and the two addressed prior thereto, not one of the nine movants alleged an actual lack of notice. *In re Lehman Brothers Holdings Inc.*, 433 B.R. at 122, 127 n.31 (Bankr. S.D.N.Y. 2010). The dearth of similar motions in these cases of unprecedented size and complexity empirically demonstrates the *de minimis* risk that granting CDC permission to file a late proof of claim under these exceptional circumstances would cause prejudice to the Debtors. Consequently, CDC respectfully submits that the lack of prejudice to the Debtors compels a finding of excusable neglect.

#### The Length Of The Delay

50. There is no bright-line rule governing what length of delay should be considered too long. *Id.* at 121. Thus, "the lateness of a claim must be considered in the context of the proceedings as a whole." *Id.* (quotation and citation omitted). The present case presents very little risk of disruption or delay of the bankruptcy proceeding. Indeed, LBSF had actual knowledge of the Claim in the scheme of this reorganization, in which \$899 billion of aggregate liquidated claims has been filed. Thus, although the Debtors have filed a plan, allowing CDC's claim does not threaten to derail the reorganization or complicate administration of the estates. Consequently, CDC respectfully submits that the length of the delay in filing its claim is a non-issue.

#### Good Faith

51. CDC has at all times acted in good faith. Upon discovering the lack of notice of the Bar Date, CDC undertook to investigate the reasons therefore, to evaluate its options, and to correct the error that occurred as a result of the improper mailing of the Bar Date Notice.

Consequently, CDC respectfully submits that its good faith compels a finding of excusable neglect.

**NOTICE**

52. Notice of this Motion has been provided pursuant to the Amended Order Implementing Certain Notice and Case Management Procedures entered in this proceeding [Docket No. 2837].

53. No prior request for the relief sought in this Motion has been made by CDC to this or any other Court.

**CONCLUSION**

**WHEREFORE**, CDC respectfully requests that this Court: (i) enter the proposed order attached hereto as **Exhibit “2”** granting the relief sought herein, and (ii) grant such other and further relief as the Court may deem just and proper.

Dated: Jericho, New York  
June 23, 2011

**SILVERMANACAMPORA LLP**  
Counsel to Caisse des Dépôts et  
Consignations,

By: s/ Jay S. Hellman

Ronald J. Friedman  
Jay S. Hellman  
Brett S. Silverman  
100 Jericho Quadrangle, Suite 300  
Jericho, New York 11753  
(516) 479-6300

# Exhibit A

(Multicurrency—Cross Border)



International Swap Dealers Association, Inc.

## MASTER AGREEMENT

dated as of July 29, 1994

("Party A")

("Party B")

Caisse des Depots et Consignations and Lehman Brothers Special Financing,

have entered and/or anticipate entering into one or more transactions (each a "Transaction") that are or will be governed by this Master Agreement, which includes the schedule (the "Schedule"), and the documents and other confirming evidence (each a "Confirmation") exchanged between the parties confirming those Transactions.

Accordingly, the parties agree as follows:—

### 1. Interpretation

- (a) *Definitions.* The terms defined in Section 14 and in the Schedule will have the meanings therein specified for the purpose of this Master Agreement.
- (b) *Inconsistency.* In the event of any inconsistency between the provisions of the Schedule and the other provisions of this Master Agreement, the Schedule will prevail. In the event of any inconsistency between the provisions of any Confirmation and this Master Agreement (including the Schedule), such Confirmation will prevail for the purpose of the relevant Transaction.
- (c) *Single Agreement.* All Transactions are entered into in reliance on the fact that this Master Agreement and all Confirmations form a single agreement between the parties (collectively referred to as this "Agreement"), and the parties would not otherwise enter into any Transactions.

### 2. Obligations

#### (a) General Conditions.

- (i) Each party will make each payment or delivery specified in each Confirmation to be made by it, subject to the other provisions of this Agreement.
- (ii) Payments under this Agreement will be made on the due date for value on that date in the place of the account specified in the relevant Confirmation or otherwise pursuant to this Agreement, in freely transferable funds and in the manner customary for payments in the required currency. Where settlement is by delivery (that is, other than by payment), such delivery will be made for receipt on the due date in the manner customary for the relevant obligation unless otherwise specified in the relevant Confirmation or elsewhere in this Agreement.
- (iii) Each obligation of each party under Section 2(a)(i) is subject to (1) the condition precedent that no Event of Default or Potential Event of Default with respect to the other party has occurred and is continuing, (2) the condition precedent that no Early Termination Date in respect of the relevant Transaction has occurred or been effectively designated and (3) each other applicable condition precedent specified in this Agreement.

(b) *Change of Account.* Either party may change its account for receiving a payment or delivery by giving notice to the other party at least five Local Business Days prior to the scheduled date for the payment or delivery to which such change applies unless such other party gives timely notice of a reasonable objection to such change.

(c) *Netting.* If on any date amounts would otherwise be payable:—

- (i) in the same currency; and
- (ii) in respect of the same Transaction

by each party to the other, then, on such date, such party's obligation to make payment of any such amount will be automatically satisfied and discharged if the aggregate amount that would otherwise have been payable by one party exceeds the aggregate amount that would otherwise have been payable by the other party, replaced by an obligation upon the party by whom the larger aggregate amount would have been payable to pay to the other party the excess of the larger aggregate amount over the smaller aggregate amount.

The parties may elect in respect of two or more Transactions that a net amount will be determined in respect of all amounts payable on the same date in the same currency in respect of such Transaction, regardless of whether such amounts are payable in respect of the same Transaction. The election may be made in the Schedule or a Confirmation by specifying that subparagraph (ii) above will not apply to the Transactions identified as being subject to the election, together with the starting date (in which case subparagraph (ii) above will not, or will cease to, apply to such Transactions from such date). This election may be made separately for different groups of Transactions and will apply separately to each pairing of Offices through which the parties make and receive payments or deliveries.

(d) *Deduction or Withholding for Tax.*

(i) *Gross-Up.* All payments under this Agreement will be made without any deduction or withholding for or on account of any Tax unless such deduction or withholding is required by any applicable law, as modified by the practice of any relevant governmental revenue authority, then in effect. If a party is so required to deduct or withhold, then that party ("X") will:—

- (1) promptly notify the other party ("Y") of such requirement;
- (2) pay to the relevant authorities the full amount required to be deducted or withheld (including the full amount required to be deducted or withheld from any additional amount paid by X to Y under this Section 2(d)) promptly upon the earlier of determining that such deduction or withholding is required or receiving notice that such amount has been assessed against Y;
- (3) promptly forward to Y an official receipt (or a certified copy), or other documentation reasonably acceptable to Y, evidencing such payment to such authorities; and
- (4) if such Tax is an Indemnifiable Tax, pay to Y, in addition to the payment to which Y is otherwise entitled under this Agreement, such additional amount as is necessary to ensure that the net amount actually received by Y (free and clear of Indemnifiable Taxes, whether assessed against X or Y) will equal the full amount Y would have received had no such deduction or withholding been required. However, X will not be required to pay any additional amount to Y to the extent that it would not be required to be paid but for:
  - (A) the failure by Y to comply with or perform any agreement contained in Section 4(a)(i), 4(a)(ii) or 4(d); or
  - (B) the failure of a representation made by Y pursuant to Section 3(f) to be accurate and true unless such failure would not have occurred but for (I) any action taken by a taxing authority, or brought in a court of competent jurisdiction, on or after the date on which a Transaction is entered into (regardless of whether such action is taken or brought with respect to a party to this Agreement) or (II) a Change in Tax Law.

(ii) **Liability.** If:—

- (1) X is required by any applicable law, as modified by the practice of any relevant governmental revenue authority, to make any deduction or withholding in respect of which X would not be required to pay an additional amount to Y under Section 2(d)(i)(4);
- (2) X does not so deduct or withhold; and
- (3) a liability resulting from such Tax is assessed directly against X,

then, except to the extent Y has satisfied or then satisfies the liability resulting from such Tax, Y will promptly pay to X the amount of such liability (including any related liability for interest, but including any related liability for penalties only if Y has failed to comply with or perform any agreement contained in Section 4(a)(i), 4(a)(iii) or 4(d)).

(e) **Default Interest; Other Amounts.** Prior to the occurrence or effective designation of an Early Termination Date in respect of the relevant Transaction, a party that defaults in the performance of any payment obligation will, to the extent permitted by law and subject to Section 6(c), be required to pay interest (before as well as after judgment) on the overdue amount to the other party on demand in the same currency as such overdue amount, for the period from (and including) the original due date for payment to (but excluding) the date of actual payment, at the Default Rate. Such interest will be calculated on the basis of daily compounding and the actual number of days elapsed. If, prior to the occurrence or effective designation of an Early Termination Date in respect of the relevant Transaction, a party defaults in the performance of any obligation required to be settled by delivery, it will compensate the other party on demand if and to the extent provided for in the relevant Confirmation or elsewhere in this Agreement.

### 3. Representations

Each party represents to the other party (which representations will be deemed to be repeated by each party on each date on which a Transaction is entered into and, in the case of the representations in Section 3(f), at all times until the termination of this Agreement) that:—

(a) **Basic Representations.**

- (i) **Status.** It is duly organised and validly existing under the laws of the jurisdiction of its organisation or incorporation and, if relevant under such laws, in good standing;
- (ii) **Powers.** It has the power to execute this Agreement and any other documentation relating to this Agreement to which it is a party, to deliver this Agreement and any other documentation relating to this Agreement that it is required by this Agreement to deliver and to perform its obligations under this Agreement and any obligations it has under any Credit Support Document to which it is a party and has taken all necessary action to authorise such execution, delivery and performance;
- (iii) **No Violation or Conflict.** Such execution, delivery and performance do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets;
- (iv) **Consents.** All governmental and other consents that are required to have been obtained by it with respect to this Agreement or any Credit Support Document to which it is a party have been obtained and are in full force and effect and all conditions of any such consents have been complied with; and
- (v) **Obligations Binding.** Its obligations under this Agreement and any Credit Support Document to which it is a party constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)).

- (b) *Absence of Certain Events.* No Event of Default or Potential Event of Default or, to its knowledge, Termination Event with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement or any Credit Support Document to which it is a party.
- (c) *Absence of Litigation.* There is not pending or, to its knowledge, threatened against it or any of its Affiliates any action, suit or proceeding at law or in equity or before any court, tribunal, governmental body, agency or official or any arbitrator that is likely to affect the legality, validity or enforceability against it of this Agreement or any Credit Support Document to which it is a party or its ability to perform its obligations under this Agreement or such Credit Support Document.
- (d) *Accuracy of Specified Information.* All applicable information that is furnished in writing by or on behalf of it to the other party and is identified for the purpose of this Section 3(d) in the Schedule is, as of the date of the information, true, accurate and complete, in every material respect.
- (e) *Payer Tax Representation.* Each representation specified in the Schedule as being made by it for the purpose of this Section 3(e) is accurate and true.
- (f) *Payee Tax Representations.* Each representation specified in the Schedule as being made by it for the purpose of this Section 3(f) is accurate and true.

#### 4. Agreements

Each party agrees with the other that, so long as either party has or may have any obligation under this Agreement or under any Credit Support Document to which it is a party:—

- (a) *Furnish Specified Information.* It will deliver to the other party or, in certain cases under subparagraph (iii) below, to such government or taxing authority as the other party reasonably directs:—
  - (i) any forms, documents or certificates relating to taxation specified in the Schedule or any Confirmation;
  - (ii) any other documents specified in the Schedule or any Confirmation; and
  - (iii) upon reasonable demand by such other party, any form or document that may be required or reasonably requested in writing in order to allow such other party or its Credit Support Provider to make a payment under this Agreement or any applicable Credit Support Document without any deduction or withholding for or on account of any Tax or with such deduction or withholding at a reduced rate (so long as the completion, execution or submission of such form or document would not materially prejudice the legal or commercial position of the party in receipt of such demand), with any such form or document to be accurate and completed in a manner reasonably satisfactory to such other party and to be executed and to be delivered with any reasonably required certification, in each case by the date specified in the Schedule or such Confirmation or, if none is specified, as soon as reasonably practicable.
- (b) *Maintain Authorisations.* It will use all reasonable efforts to maintain in full force and effect all consents of any governmental or other authority that are required to be obtained by it with respect to this Agreement or any Credit Support Document to which it is a party and will use all reasonable efforts to obtain any that may become necessary in the future.
- (c) *Comply with Laws.* It will comply in all material respects with all applicable laws and orders to which it may be subject if failure so to comply would materially impair its ability to perform its obligations under this Agreement or any Credit Support Document to which it is a party.
- (d) *Tax Agreement.* It will give notice of any failure of a representation made by it under Section 3(f) to be accurate and true promptly upon learning of such failure.
- (e) *Payment of Stamp Tax.* Subject to Section 11, it will pay any Stamp Tax levied or imposed upon it or in respect of its execution or performance of this Agreement by a jurisdiction in which it is incorporated.

organised, managed and controlled, or considered to have its seat, or in which a branch or office through which it is acting for the purpose of this Agreement is located ("Stamp Tax Jurisdiction") and will indemnify the other party against any Stamp Tax levied or imposed upon the other party or in respect of the other party's execution or performance of this Agreement by any such Stamp Tax Jurisdiction which is not also a Stamp Tax Jurisdiction with respect to the other party.

## 5. Events of Default and Termination Events

(a) *Events of Default.* The occurrence at any time with respect to a party or, if applicable, any Credit Support Provider of such party or any Specified Entity of such party of any of the following events constitutes an event of default (an "Event of Default") with respect to such party:—

(i) *Failure to Pay or Deliver.* Failure by the party to make, when due, any payment under this Agreement or delivery under Section 2(a)(i) or 2(e) required to be made by it if such failure is not remedied on or before the third Local Business Day after notice of such failure is given to the party;

(ii) *Breach of Agreement.* Failure by the party to comply with or perform any agreement or obligation (other than an obligation to make any payment under this Agreement or delivery under Section 2(a)(i) or 2(e) or to give notice of a Termination Event or any agreement or obligation under Section 4(a)(i), 4(a)(iii) or 4(d)) to be complied with or performed by the party in accordance with this Agreement if such failure is not remedied on or before the thirtieth day after notice of such failure is given to the party;

(iii) *Credit Support Default.*

(1) Failure by the party or any Credit Support Provider of such party to comply with or perform any agreement or obligation to be complied with or performed by it in accordance with any Credit Support Document if such failure is continuing after any applicable grace period has elapsed;

(2) the expiration or termination of such Credit Support Document or the failing or ceasing of such Credit Support Document to be in full force and effect for the purpose of this Agreement (in either case other than in accordance with its terms) prior to the satisfaction of all obligations of such party under each Transaction to which such Credit Support Document relates without the written consent of the other party; or

(3) the party or such Credit Support Provider disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Credit Support Document;

(iv) *Misrepresentation.* A representation (other than a representation under Section 3(e) or (f)) made or repeated or deemed to have been made or repeated by the party or any Credit Support Provider of such party in this Agreement or any Credit Support Document proves to have been incorrect or misleading in any material respect when made or repeated or deemed to have been made or repeated;

(v) *Default under Specified Transaction.* The party, any Credit Support Provider of such party or any applicable Specified Entity of such party (1) defaults under a Specified Transaction and, after giving effect to any applicable notice requirement or grace period, there occurs a liquidation of, an acceleration of obligations under, or an early termination of, that Specified Transaction, (2) defaults, after giving effect to any applicable notice requirement or grace period, in making any payment or delivery due on the last payment, delivery or exchange date of, or any payment on early termination of, a Specified Transaction (or such default continues for at least three Local Business Days if there is no applicable notice requirement or grace period) or (3) disaffirms, disclaims, repudiates or rejects, in whole or in part, a Specified Transaction (or such action is taken by any person or entity appointed or empowered to operate it or act on its behalf);

(vi) *Cross Default.* If "Cross Default" is specified in the Schedule as applying to the party, the occurrence or existence of (1) a default, event of default or other similar condition or event (however

described) in respect of such party, any Credit Support Provider of such party or any applicable Specified Entity of such party under one or more agreements or instruments relating to Specified Indebtedness of any of them (individually or collectively) in an aggregate amount of not less than the applicable Threshold Amount (as specified in the Schedule) which has resulted in such Specified Indebtedness becoming, or becoming capable at such time of being declared, due and payable under such agreements or instruments, before it would otherwise have been due and payable or (2) a default by such party, such Credit Support Provider or such Specified Entity (individually or collectively) in making one or more payments on the due date thereof in an aggregate amount of not less than the applicable Threshold Amount under such agreements or instruments (after giving effect to any applicable notice requirement or grace period);

(vii) *Bankruptcy*. The party, any Credit Support Provider of such party or any applicable Specified Entity of such party:—

(1) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (2) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due; (3) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (4) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition (A) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation or (B) is not dismissed, discharged, stayed or restrained in each case within 30 days of the institution or presentation thereof; (5) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger); (6) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets; (7) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 days thereafter; (8) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (1) to (7) (inclusive); or (9) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts; or

(viii) *Merger Without Assumption*. The party or any Credit Support Provider of such party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer:—

(1) the resulting, surviving or transferee entity fails to assume all the obligations of such party or such Credit Support Provider under this Agreement or any Credit Support Document to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other party to this Agreement; or

(2) the benefits of any Credit Support Document fail to extend (without the consent of the other party) to the performance by such resulting, surviving or transferee entity of its obligations under this Agreement.

(b) *Termination Events*. The occurrence at any time with respect to a party or, if applicable, any Credit Support Provider of such party or any Specified Entity of such party of any event specified below constitutes an Illegality if the event is specified in (i) below, a Tax Event if the event is specified in (ii) below or a Tax Event Upon Merger if the event is specified in (iii) below, and, if specified to be applicable, a Credit Event

Upon Merger if the event is specified pursuant to (iv) below or an Additional Termination Event if the event is specified pursuant to (v) below:—

(i) **Illegality.** Due to the adoption of, or any change in, any applicable law after the date on which a Transaction is entered into, or due to the promulgation of, or any change in, the interpretation by any court, tribunal or regulatory authority with competent jurisdiction of any applicable law after such date, it becomes unlawful (other than as a result of a breach by the party of Section 4(b)) for such party (which will be the Affected Party):—

(1) to perform any absolute or contingent obligation to make a payment or delivery or to receive a payment or delivery in respect of such Transaction or to comply with any other material provision of this Agreement relating to such Transaction; or

(2) to perform, or for any Credit Support Provider of such party to perform, any contingent or other obligation which the party (or such Credit Support Provider) has under any Credit Support Document relating to such Transaction;

(ii) **Tax Event.** Due to (x) any action taken by a taxing authority, or brought in a court of competent jurisdiction, on or after the date on which a Transaction is entered into (regardless of whether such action is taken or brought with respect to a party to this Agreement) or (y) a Change in Tax Law, the party (which will be the Affected Party) will, or there is a substantial likelihood that it will, on the next succeeding Scheduled Payment Date (1) be required to pay to the other party an additional amount in respect of an Indemnifiable Tax under Section 2(d)(i)(4) (except in respect of interest under Section 2(e), 6(d)(ii) or 6(e)) or (2) receive a payment from which an amount is required to be deducted or withheld for or on account of a Tax (except in respect of interest under Section 2(e), 6(d)(ii) or 6(e)) and no additional amount is required to be paid in respect of such Tax under Section 2(d)(i)(4) (other than by reason of Section 2(d)(i)(4)(A) or (B));

(iii) **Tax Event Upon Merger.** The party (the "Burdened Party") on the next succeeding Scheduled Payment Date will either (1) be required to pay an additional amount in respect of an Indemnifiable Tax under Section 2(d)(i)(4) (except in respect of interest under Section 2(e), 6(d)(ii) or 6(e)) or (2) receive a payment from which an amount has been deducted or withheld for or on account of any Indemnifiable Tax in respect of which the other party is not required to pay an additional amount (other than by reason of Section 2(d)(i)(4)(A) or (B)), in either case as a result of a party consolidating or amalgamating with, or merging with or into, or transferring all or substantially all its assets to, another entity (which will be the Affected Party) where such action does not constitute an event described in Section 5(a)(viii);

(iv) **Credit Event Upon Merger.** If "Credit Event Upon Merger" is specified in the Schedule as applying to the party, such party ("X"), any Credit Support Provider of X or any applicable Specified Entity of X consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity and such action does not constitute an event described in Section 5(a)(viii) but the creditworthiness of the resulting, surviving or transferee entity is materially weaker than that of X, such Credit Support Provider or such Specified Entity, as the case may be, immediately prior to such action (and, in such event, X or its successor or transferee, as appropriate, will be the Affected Party); or

(v) **Additional Termination Event.** If any "Additional Termination Event" is specified in the Schedule or any Confirmation as applying, the occurrence of such event (and, in such event, the Affected Party or Affected Parties shall be as specified for such Additional Termination Event in the Schedule or such Confirmation).

(c) **Event of Default and Illegality.** If an event or circumstance which would otherwise constitute or give rise to an Event of Default also constitutes an Illegality, it will be treated as an Illegality and will not constitute an Event of Default.

## 6. Early Termination

(a) *Right to Terminate Following Event of Default.* If at any time an Event of Default with respect to a party (the "Defaulting Party") has occurred and is then continuing, the other party (the "Non-defaulting Party") may, by not more than 20 days notice to the Defaulting Party specifying the relevant Event of Default, designate a day not earlier than the day such notice is effective as an Early Termination Date in respect of all outstanding Transactions. If, however, "Automatic Early Termination" is specified in the Schedule as applying to a party, then an Early Termination Date in respect of all outstanding Transactions will occur immediately upon the occurrence with respect to such party of an Event of Default specified in Section 5(a)(vii)(1), (3), (5), (6) or, to the extent analogous thereto, (8), and, as of the time immediately preceding the institution of the relevant proceeding or the presentation of the relevant petition upon the occurrence with respect to such party of an Event of Default specified in Section 5(a)(vii)(4) or, to the extent analogous thereto, (8).

(b) *Right to Terminate Following Termination Event.*

(i) *Notice.* If a Termination Event occurs, an Affected Party will, promptly upon becoming aware of it, notify the other party, specifying the nature of that Termination Event and each Affected Transaction and will also give such other information about that Termination Event as the other party may reasonably require.

(ii) *Transfer to Avoid Termination Event.* If either an Illegality under Section 5(b)(i)(1) or a Tax Event occurs and there is only one Affected Party, or if a Tax Event Upon Merger occurs and the Burdened Party is the Affected Party, the Affected Party will, as a condition to its right to designate an Early Termination Date under Section 6(b)(iv), use all reasonable efforts (which will not require such party to incur a loss, excluding immaterial, incidental expenses) to transfer within 20 days after it gives notice under Section 6(b)(i) all its rights and obligations under this Agreement in respect of the Affected Transactions to another of its Offices or Affiliates so that such Termination Event ceases to exist.

If the Affected Party is not able to make such a transfer it will give notice to the other party to that effect within such 20 day period, whereupon the other party may effect such a transfer within 30 days after the notice is given under Section 6(b)(i).

Any such transfer by a party under this Section 6(b)(ii) will be subject to and conditional upon the prior written consent of the other party, which consent will not be withheld if such other party's policies in effect at such time would permit it to enter into transactions with the transferee on the terms proposed.

(iii) *Two Affected Parties.* If an Illegality under Section 5(b)(i)(1) or a Tax Event occurs and there are two Affected Parties, each party will use all reasonable efforts to reach agreement within 30 days after notice thereof is given under Section 6(b)(i) on action to avoid that Termination Event.

(iv) *Right to Terminate.* If:

(1) a transfer under Section 6(b)(ii) or an agreement under Section 6(b)(iii), as the case may be, has not been effected with respect to all Affected Transactions within 30 days after an Affected Party gives notice under Section 6(b)(i); or

(2) an Illegality under Section 5(b)(i)(2), a Credit Event Upon Merger or an Additional Termination Event occurs, or a Tax Event Upon Merger occurs and the Burdened Party is not the Affected Party,

either party in the case of an Illegality, the Burdened Party in the case of a Tax Event Upon Merger, any Affected Party in the case of a Tax Event or an Additional Termination Event if there is more than one Affected Party, or the party which is not the Affected Party in the case of a Credit Event Upon Merger or an Additional Termination Event if there is only one Affected Party may, by not more than 20 days notice to the other party and provided that the relevant Termination Event is then

continuing, designate a day not earlier than the day such notice is effective as an Early Termination Date in respect of all Affected Transactions.

(c) *Effect of Designation.*

(i) If notice designating an Early Termination Date is given under Section 6(a) or (b), the Early Termination Date will occur on the date so designated, whether or not the relevant Event of Default or Termination Event is then continuing.

(ii) Upon the occurrence or effective designation of an Early Termination Date, no further payments or deliveries under Section 2(a)(i) or 2(e) in respect of the Terminated Transactions will be required to be made, but without prejudice to the other provisions of this Agreement. The amount, if any, payable in respect of an Early Termination Date shall be determined pursuant to Section 6(e).

(d) *Calculations.*

(i) *Statement.* On or as soon as reasonably practicable following the occurrence of an Early Termination Date, each party will make the calculations on its part, if any, contemplated by Section 6(e) and will provide to the other party a statement (1) showing, in reasonable detail, such calculations (including all relevant quotations and specifying any amount payable under Section 6(e)) and (2) giving details of the relevant account to which any amount payable to it is to be paid. In the absence of written confirmation from the source of a quotation obtained in determining a Market Quotation, the records of the party obtaining such quotation will be conclusive evidence of the existence and accuracy of such quotation.

(ii) *Payment Date.* An amount calculated as being due in respect of any Early Termination Date under Section 6(e) will be payable on the day that notice of the amount payable is effective (in the case of an Early Termination Date which is designated or occurs as a result of an Event of Default) and on the day which is two Local Business Days after the day on which notice of the amount payable is effective (in the case of an Early Termination Date which is designated as a result of a Termination Event). Such amount will be paid together with (to the extent permitted under applicable law) interest thereon (before as well as after judgment) in the Termination Currency, from (and including) the relevant Early Termination Date to (but excluding) the date such amount is paid, at the Applicable Rate. Such interest will be calculated on the basis of daily compounding and the actual number of days elapsed.

(e) *Payments on Early Termination.* If an Early Termination Date occurs, the following provisions shall apply based on the parties' election in the Schedule of a payment measure, either "Market Quotation" or "Loss", and a payment method, either the "First Method" or the "Second Method". If the parties fail to designate a payment measure or payment method in the Schedule, it will be deemed that "Market Quotation" or the "Second Method", as the case may be, shall apply. The amount, if any, payable in respect of an Early Termination Date and determined pursuant to this Section will be subject to any Set-off.

(i) *Events of Default.* If the Early Termination Date results from an Event of Default:—

(1) *First Method and Market Quotation.* If the First Method and Market Quotation apply, the Defaulting Party will pay to the Non-defaulting Party the excess, if a positive number, of (A) the sum of the Settlement Amount (determined by the Non-defaulting Party) in respect of the Terminated Transactions and the Termination Currency Equivalent of the Unpaid Amounts owing to the Non-defaulting Party over (B) the Termination Currency Equivalent of the Unpaid Amounts owing to the Defaulting Party.

(2) *First Method and Loss.* If the First Method and Loss apply, the Defaulting Party will pay to the Non-defaulting Party, if a positive number, the Non-defaulting Party's Loss in respect of this Agreement.

(3) *Second Method and Market Quotation.* If the Second Method and Market Quotation apply, an amount will be payable equal to (A) the sum of the Settlement Amount (determined by the

Non-defaulting Party) in respect of the Terminated Transactions and the Termination Currency Equivalent of the Unpaid Amounts owing to the Non-defaulting Party less (B) the Termination Currency Equivalent of the Unpaid Amounts owing to the Defaulting Party. If that amount is a positive number, the Defaulting Party will pay it to the Non-defaulting Party; if it is a negative number, the Non-defaulting Party will pay the absolute value of that amount to the Defaulting Party.

(4) *Second Method.....Loss.* If the Second Method and Loss apply, an amount will be payable equal to the Non-defaulting Party's Loss in respect of this Agreement. If that amount is a positive number, the Defaulting Party will pay it to the Non-defaulting Party; if it is a negative number, the Non-defaulting Party will pay the absolute value of that amount to the Defaulting Party.

(ii) *Termination Events.* If the Early Termination Date results from a Termination Event:—

(1) *One Affected Party.* If there is one Affected Party, the amount payable will be determined in accordance with Section 6(e)(i)(3), if Market Quotation applies, or Section 6(e)(i)(4), if Loss applies, except that, in either case, references to the Defaulting Party and to the Non-defaulting Party will be deemed to be references to the Affected Party and the party which is not the Affected Party, respectively, and, if Loss applies and fewer than all the Transactions are being terminated, Loss shall be calculated in respect of all Terminated Transactions.

(2) *Two Affected Parties.* If there are two Affected Parties:—

(A) if Market Quotation applies, each party will determine a Settlement Amount in respect of the Terminated Transactions, and an amount will be payable equal to (I) the sum of (a) one-half of the difference between the Settlement Amount of the party with the higher Settlement Amount ("X") and the Settlement Amount of the party with the lower Settlement Amount ("Y") and (b) the Termination Currency Equivalent of the Unpaid Amounts owing to X less (II) the Termination Currency Equivalent of the Unpaid Amounts owing to Y; and

(B) if Loss applies, each party will determine its Loss in respect of this Agreement (or, if fewer than all the Transactions are being terminated, in respect of all Terminated Transactions) and an amount will be payable equal to one-half of the difference between the Loss of the party with the higher Loss ("X") and the Loss of the party with the lower Loss ("Y").

If the amount payable is a positive number, Y will pay it to X; if it is a negative number, X will pay the absolute value of that amount to Y.

(iii) *Adjustment for Bankruptcy.* In circumstances where an Early Termination Date occurs because "Automatic Early Termination" applies in respect of a party, the amount determined under this Section 6(e) will be subject to such adjustments as are appropriate and permitted by law to reflect any payments or deliveries made by one party to the other under this Agreement (and retained by such other party) during the period from the relevant Early Termination Date to the date for payment determined under Section 6(d)(ii).

(iv) *Pre-Estimate.* The parties agree that if Market Quotation applies an amount recoverable under this Section 6(e) is a reasonable pre-estimate of loss and not a penalty. Such amount is payable for the loss of bargain and the loss of protection against future risks and except as otherwise provided in this Agreement neither party will be entitled to recover any additional damages as a consequence of such losses.

## 7. Transfer

Subject to Section 6(b)(ii), neither this Agreement nor any interest or obligation in or under this Agreement may be transferred (whether by way of security or otherwise) by either party without the prior written consent of the other party, except that:—

- (a) a party may make such a transfer of this Agreement pursuant to a consolidation or amalgamation with, or merger with or into, or transfer of all or substantially all its assets to, another entity (but without prejudice to any other right or remedy under this Agreement); and
- (b) a party may make such a transfer of all or any part of its interest in any amount payable to it from a Defaulting Party under Section 6(e).

Any purported transfer that is not in compliance with this Section will be void.

## 8. Contractual Currency

(a) *Payment in the Contractual Currency.* Each payment under this Agreement will be made in the relevant currency specified in this Agreement for that payment (the "Contractual Currency"). To the extent permitted by applicable law, any obligation to make payments under this Agreement in the Contractual Currency will not be discharged or satisfied by any tender in any currency other than the Contractual Currency, except to the extent such tender results in the actual receipt by the party to which payment is owed, acting in a reasonable manner and in good faith in converting the currency so tendered into the Contractual Currency, of the full amount in the Contractual Currency of all amounts payable in respect of this Agreement. If for any reason the amount in the Contractual Currency so received falls short of the amount in the Contractual Currency payable in respect of this Agreement, the party required to make the payment will, to the extent permitted by applicable law, immediately pay such additional amount in the Contractual Currency as may be necessary to compensate for the shortfall. If for any reason the amount in the Contractual Currency so received exceeds the amount in the Contractual Currency payable in respect of this Agreement, the party receiving the payment will refund promptly the amount of such excess.

(b) *Judgments.* To the extent permitted by applicable law, if any judgment or order expressed in a currency other than the Contractual Currency is rendered (i) for the payment of any amount owing in respect of this Agreement, (ii) for the payment of any amount relating to any early termination in respect of this Agreement or (iii) in respect of a judgment or order of another court for the payment of any amount described in (i) or (ii) above, the party seeking recovery, after recovery in full of the aggregate amount to which such party is entitled pursuant to the judgment or order, will be entitled to receive immediately from the other party the amount of any shortfall of the Contractual Currency received by such party as a consequence of sums paid in such other currency and will refund promptly to the other party any excess of the Contractual Currency received by such party as a consequence of sums paid in such other currency if such shortfall or such excess arises or results from any variation between the rate of exchange at which the Contractual Currency is converted into the currency of the judgment or order for the purposes of such judgment or order and the rate of exchange at which such party is able, acting in a reasonable manner and in good faith in converting the currency received into the Contractual Currency, to purchase the Contractual Currency with the amount of the currency of the judgment or order actually received by such party. The term "rate of exchange" includes, without limitation, any premiums and costs of exchange payable in connection with the purchase of or conversion into the Contractual Currency.

(c) *Separate Indemnities.* To the extent permitted by applicable law, these indemnities constitute separate and independent obligations from the other obligations in this Agreement, will be enforceable as separate and independent causes of action, will apply notwithstanding any indulgence granted by the party to which any payment is owed and will not be affected by judgment being obtained or claim or proof being made for any other sums payable in respect of this Agreement.

(d) *Evidence of Loss.* For the purpose of this Section 8, it will be sufficient for a party to demonstrate that it would have suffered a loss had an actual exchange or purchase been made.

## 9. Miscellaneous

(a) **Entire Agreement.** This Agreement constitutes the entire agreement and understanding of the parties with respect to its subject matter and supersedes all oral communication and prior writings with respect thereto.

(b) **Amendments.** No amendment, modification or waiver in respect of this Agreement will be effective unless in writing (including a writing evidenced by a facsimile transmission) and executed by each of the parties or confirmed by an exchange of telexes or electronic messages on an electronic messaging system.

(c) **Survival of Obligations.** Without prejudice to Section 6(c)(iii) and 6(c)(ii), the obligations of the parties under this Agreement will survive the termination of an Transaction.

(d) **Remedies Cumulative.** Except as provided in this Agreement, the rights, powers, remedies and privileges provided in this Agreement are cumulative and not exclusive of any rights, powers, remedies and privileges provided by law.

(e) **Counterparts and Confirmations.**

- (i) This Agreement (and each amendment, modification and waiver in respect of it) may be executed and delivered in counterparts (including by facsimile transmission), each of which will be deemed an original.
- (ii) The parties intend that they are legally bound by the terms of each Transaction from the moment they agree to those terms (whether orally or otherwise). A Confirmation shall be entered into as soon as practicable and may be executed and delivered in counterparts (including by facsimile transmission) or be created by an exchange of telexes or by an exchange of electronic messages on an electronic messaging system, which in each case will be sufficient for all purposes to evidence a binding supplement to this Agreement. The parties will specify therein or through another effective means that any such counterpart, telex or electronic message constitutes a Confirmation.

(f) **No Waiver of Rights.** A failure or delay in exercising any right, power or privilege in respect of this Agreement will not be presumed to operate as a waiver, and a single or partial exercise of any right, power or privilege will not be presumed to preclude any subsequent or further exercise, of that right, power or privilege or the exercise of any other right, power or privilege.

(g) **Headings.** The headings used in this Agreement are for convenience of reference only and are not to affect the construction of or to be taken into consideration in interpreting this Agreement.

## 10. Offices; Multibranch Parties

(a) If Section 10(a) is specified in the Schedule as applying, each party that enters into a Transaction through an Office other than its head or home office represents to the other party that, notwithstanding the place of booking office or jurisdiction of incorporation or organisation of such party, the obligations of such party are the same as if it had entered into the Transaction through its head or home office. This representation will be deemed to be repeated by such party on each date on which a Transaction is entered into.

(b) Neither party may change the Office through which it makes and receives payments or deliveries for the purpose of a Transaction without the prior written consent of the other party.

(c) If a party is specified as a Multibranch Party in the Schedule, such Multibranch Party may make and receive payments or deliveries under any Transaction through any Office listed in the Schedule, and the Office through which it makes and receives payments or deliveries with respect to a Transaction will be specified in the relevant Confirmation.

## 11. Expenses

A Defaulting Party will, on demand, indemnify and hold harmless the other party for and against all reasonable out-of-pocket expenses, including legal fees and Stamp Tax, incurred by such other party by reason of the enforcement and protection of its rights under this Agreement or any Credit Support Document

to which the Defaulting Party is a party or by reason of the early termination of any Transaction, including, but not limited to, costs of collection.

## 12. Notices

(a) *Effectiveness.* Any notice or other communication in respect of this Agreement may be given in any manner set forth below (except that a notice or other communication under Section 5 or 6 may not be given by facsimile transmission or electronic messaging system) to the address or number or in accordance with the electronic messaging system details provided (see the Schedule) and will be deemed effective as indicated:—

- (i) if in writing and delivered in person or by courier, on the date it is delivered;
- (ii) if sent by telex, on the date the recipient's answerback is received;
- (iii) if sent by facsimile transmission, on the date that transmission is received by a responsible employee of the recipient in legible form (it being agreed that the burden of proving receipt will be on the sender and will not be met by a transmission report generated by the sender's facsimile machine);
- (iv) if sent by certified or registered mail (airmail, if overseas) or the equivalent (return receipt requested), on the date that mail is delivered or its delivery is attempted; or
- (v) if sent by electronic messaging system, on the date that electronic message is received,

unless the date of that delivery (or attempted delivery) or that receipt, as applicable, is not a Local Business Day or that communication is delivered (or attempted) or received, as applicable, after the close of business on a Local Business Day, in which case that communication shall be deemed given and effective on the first following day that is a Local Business Day.

(b) *Change of Addresses.* Either party may by notice to the other change the address, telex or facsimile number or electronic messaging system details at which notices or other communications are to be given to it.

## 13. Governing Law and Jurisdiction

(a) *Governing Law.* This Agreement will be governed by and construed in accordance with the law specified in the Schedule.

(b) *Jurisdiction.* With respect to any suit, action or proceedings relating to this Agreement ("Proceedings"), each party irrevocably:—

- (i) submits to the jurisdiction of the English courts, if this Agreement is expressed to be governed by English law, or to the non-exclusive jurisdiction of the courts of the State of New York and the United States District Court located in the Borough of Manhattan in New York City, if this Agreement is expressed to be governed by the laws of the State of New York; and
- (ii) waives any objection which it may have at any time to the laying of venue of any Proceedings brought in any such court, waives any claim that such Proceedings have been brought in an inconvenient forum and further waives the right to object, with respect to such Proceedings, that such court does not have any jurisdiction over such party.

Nothing in this Agreement precludes either party from bringing Proceedings in any other jurisdiction (outside, if this Agreement is expressed to be governed by English law, the Contracting States, as defined in Section 1(3) of the Civil Jurisdiction and Judgments Act 1982 or any modification, extension or re-enactment thereof for the time being in force) nor will the bringing of Proceedings in any one or more jurisdictions preclude the bringing of Proceedings in any other jurisdiction.

(c) *Service of Process.* Each party irrevocably appoints the Process Agent (if any) specified opposite its name in the Schedule to receive, for it and on its behalf, service of process in any Proceedings. If for any

reason any party's Process Agent is unable to act as such, such party will promptly notify the other party and within 30 days appoint a substitute process agent acceptable to the other party. The parties irrevocably consent to service of process given in the manner provided for notices in Section 12. Nothing in this Agreement will affect the right of either party to serve process in any other manner permitted by law.

(d) ***Waiver of Immunities.*** Each party irrevocably waives, to the fullest extent permitted by applicable law, with respect to itself and its revenues and assets (irrespective of their use or intended use), all immunity on the grounds of sovereignty or other similar grounds from (i) suit, (ii) jurisdiction of any court, (iii) relief by way of injunction, order for specific performance or for recovery of property, (iv) attachment of its assets (whether before or after judgment) and (v) execution or enforcement of any judgment to which it or its revenues or assets might otherwise be entitled in any Proceedings in the courts of any jurisdiction and irrevocably agrees, to the extent permitted by applicable law, that it will not claim any such immunity in any Proceedings.

#### 14. Definitions

As used in this Agreement:—

***"Additional Termination Event"*** has the meaning specified in Section 5(b).

***"Affected Party"*** has the meaning specified in Section 5(b).

***"Affected Transactions"*** means (a) with respect to any Termination Event consisting of an Illegality, Tax Event or Tax Event Upon Merger, all Transactions affected by the occurrence of such Termination Event and (b) with respect to any other Termination Event, all Transactions.

***"Affiliate"*** means, subject to the Schedule, in relation to any person, any entity controlled, directly or indirectly, by the person, any entity that controls, directly or indirectly, the person or any entity directly or indirectly under common control with the person. For this purpose, "control" of any entity or person means ownership of a majority of the voting power of the entity or person.

***"Applicable Rate"*** means:—

(a) in respect of obligations payable or deliverable (or which would have been but for Section 2(a)(iii)) by a Defaulting Party, the Default Rate;

(b) in respect of an obligation to pay an amount under Section 6(e) of either party from and after the date (determined in accordance with Section 6(d)(ii)) on which that amount is payable, the Default Rate;

(c) in respect of all other obligations payable or deliverable (or which would have been but for Section 2(a)(iii)) by a Non-defaulting Party, the Non-default Rate; and

(d) in all other cases, the Termination Rate.

***"Burdened Party"*** has the meaning specified in Section 5(b).

***"Change in Tax Law"*** means the enactment, promulgation, execution or ratification of, or any change in or amendment to, any law (or in the application or official interpretation of any law) that occurs on or after the date on which the relevant Transaction is entered into.

***"consent"*** includes a consent, approval, action, authorisation, exemption, notice, filing, registration or exchange control consent.

***"Credit Event Upon Merger"*** has the meaning specified in Section 5(b).

***"Credit Support Document"*** means any agreement or instrument that is specified as such in this Agreement.

***"Credit Support Provider"*** has the meaning specified in the Schedule.

***"Default Rate"*** means a rate per annum equal to the cost (without proof or evidence of any actual cost) to the relevant payee (as certified by it) if it were to fund or of funding the relevant amount plus 1% per annum.

*"Defaulting Party"* has the meaning specified in Section 6(a).

*"Early Termination Date"* means the date determined in accordance with Section 6(a) or 6(b)(iv).

*"Event of Default"* has the meaning specified in Section 5(a) and, if applicable, in the Schedule.

*"Illegality"* has the meaning specified in Section 5(b).

*"Indemnifiable Tax"* means any Tax other than a Tax that would not be imposed in respect of a payment under this Agreement but for a present or former connection between the jurisdiction of the government or taxation authority imposing such Tax and the recipient of such payment or a person related to such recipient (including, without limitation, a connection arising from such recipient or related person being or having been a citizen or resident of such jurisdiction, or being or having been organised, present or engaged in a trade or business in such jurisdiction, or having or having had a permanent establishment or fixed place of business in such jurisdiction, but excluding a connection arising solely from such recipient or related person having executed, delivered, performed its obligations or received a payment under, or enforced, this Agreement or a Credit Support Document).

*"law"* includes any treaty, law, rule or regulation (as modified, in the case of tax matters, by the practice of any relevant governmental revenue authority) and *"lawful"* and *"unlawful"* will be construed accordingly.

*"Local Business Day"* means, subject to the Schedule, a day on which commercial banks are open for business (including dealings in foreign exchange and foreign currency deposits) (a) in relation to any obligation under Section 2(a)(i), in the place(s) specified in the relevant Confirmation or, if not so specified, as otherwise agreed by the parties in writing or determined pursuant to provisions contained, or incorporated by reference, in this Agreement, (b) in relation to any other payment, in the place where the relevant account is located and, if different, in the principal financial centre, if any, of the currency of such payment, (c) in relation to any notice or other communication, including notice contemplated under Section 5(a)(i), in the city specified in the address for notice provided by the recipient and, in the case of a notice contemplated by Section 2(b), in the place where the relevant new account is to be located and (d) in relation to Section 5(a)(v)(2), in the relevant locations for performance with respect to such Specified Transaction.

*"Loss"* means, with respect to this Agreement or one or more Terminated Transactions, as the case may be, and a party, the Termination Currency Equivalent of an amount that party reasonably determines in good faith to be its total losses and costs (or gain, in which case expressed as a negative number) in connection with this Agreement or that Terminated Transaction or group of Terminated Transactions, as the case may be, including any loss of bargain, cost of funding or, at the election of such party but without duplication, loss or cost incurred as a result of its terminating, liquidating, obtaining or reestablishing any hedge or related trading position (or any gain resulting from any of them). Loss includes losses and costs (or gains) in respect of any payment or delivery required to have been made (assuming satisfaction of each applicable condition precedent) on or before the relevant Early Termination Date and not made, except so as to avoid duplication, if Section 6(e)(i)(1) or (3) or 6(e)(ii)(2)(A) applies. Loss does not include a party's legal fees and out-of-pocket expenses referred to under Section 11. A party will determine its Loss as of the relevant Early Termination Date, or, if that is not reasonably practicable, as of the earliest date thereafter as is reasonably practicable. A party may (but need not) determine its Loss by reference to quotations of relevant rates or prices from one or more leading dealers in the relevant markets.

*"Market Quotation"* means, with respect to one or more Terminated Transactions and a party making the determination, an amount determined on the basis of quotations from Reference Market-makers. Each quotation will be for an amount, if any, that would be paid to such party (expressed as a negative number) or by such party (expressed as a positive number) in consideration of an agreement between such party (taking into account any existing Credit Support Document with respect to the obligations of such party) and the quoting Reference Market-maker to enter into a transaction (the "Replacement Transaction") that would have the effect of preserving for such party the economic equivalent of any payment or delivery (whether the underlying obligation was absolute or contingent and assuming the satisfaction of each applicable condition precedent) by the parties under Section 2(a)(i) in respect of such Terminated Transaction or group of Terminated Transactions that would, but for the occurrence of the relevant Early Termination Date, have

been required after that date. For this purpose, Unpaid Amounts in respect of the Terminated Transaction or group of Terminated Transactions are to be excluded but, without limitation, any payment or delivery that would, but for the relevant Early Termination Date, have been required (assuming satisfaction of each applicable condition precedent) after that Early Termination Date is to be included. The Replacement Transaction would be subject to such documentation as such party and the Reference Market-maker may, in good faith, agree. The party making the determination (or its agent) will request each Reference Market-maker to provide its quotation to the extent reasonably practicable as of the same day and time (without regard to different time zones) on or as soon as reasonably practicable after the relevant Early Termination Date. The day and time as of which those quotations are to be obtained will be selected in good faith by the party obliged to make a determination under Section 6(e), and, if each party is so obliged, after consultation with the other. If more than three quotations are provided, the Market Quotation will be the arithmetic mean of the quotations, without regard to the quotations having the highest and lowest values. If exactly three such quotations are provided, the Market Quotation will be the quotation remaining after disregarding the highest and lowest quotations. For this purpose, if more than one quotation has the same highest value or lowest value, then one of such quotations shall be disregarded. If fewer than three quotations are provided, it will be deemed that the Market Quotation in respect of such Terminated Transaction or group of Terminated Transactions cannot be determined.

**"Non-default Rate"** means a rate per annum equal to the cost (without proof or evidence of any actual cost) to the Non-defaulting Party (as certified by it) if it were to fund the relevant amount.

**"Non-defaulting Party"** has the meaning specified in Section 6(a).

**"Office"** means a branch or office of a party, which may be such party's head or home office.

**"Potential Event of Default"** means any event which, with the giving of notice or the lapse of time or both, would constitute an Event of Default.

**"Reference Market-makers"** means four leading dealers in the relevant market selected by the party determining a Market Quotation in good faith (a) from among dealers of the highest credit standing which satisfy all the criteria that such party applies generally at the time in deciding whether to offer or to make an extension of credit and (b) to the extent practicable, from among such dealers having an office in the same city.

**"Relevant Jurisdiction"** means, with respect to a party, the jurisdictions (a) in which the party is incorporated, organised, managed and controlled or considered to have its seat, (b) where an Office through which the party is acting for purposes of this Agreement is located, (c) in which the party executes this Agreement and (d) in relation to any payment, from or through which such payment is made.

**"Scheduled Payment Date"** means a date on which a payment or delivery is to be made under Section 2(a)(i) with respect to a Transaction.

**"Set-off"** means set-off, offset, combination of accounts, right of retention or withholding or similar right or requirement to which the payer of an amount under Section 6 is entitled or subject (whether arising under this Agreement, another contract, applicable law or otherwise) that is exercised by, or imposed on, such payer.

**"Settlement Amount"** means, with respect to a party and any Early Termination Date, the sum of:—

(a) the Termination Currency Equivalent of the Market Quotations (whether positive or negative) for each Terminated Transaction or group of Terminated Transactions for which a Market Quotation is determined; and

(b) such party's Loss (whether positive or negative and without reference to any Unpaid Amounts) for each Terminated Transaction or group of Terminated Transactions for which a Market Quotation cannot be determined or would not (in the reasonable belief of the party making the determination) produce a commercially reasonable result.

**"Specified Entity"** has the meaning specified in the Schedule.

***“Specified Indebtedness”*** means, subject to the Schedule, any obligation (whether present or future, contingent or otherwise, as principal or surety or otherwise) in respect of borrowed money.

***“Specified Transaction”*** means, subject to the Schedule, (a) any transaction (including an agreement with respect thereto) now existing or hereafter entered into between one party to this Agreement (or any Credit Support Provider of such party or any applicable Specified Entity of such party) and the other party to this Agreement (or any Credit Support Provider of such other party or any applicable Specified Entity of such other party) which is a rate swap transaction, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option or any other similar transaction (including any option with respect to any of these transactions), (b) any combination of these transactions and (c) any other transaction identified as a Specified Transaction in this Agreement or the relevant confirmation.

***“Stamp Tax”*** means any stamp, registration, documentation or similar tax.

***“Tax”*** means any present or future tax, levy, impost, duty, charge, assessment or fee of any nature (including interest, penalties and additions thereto) that is imposed by any government or other taxing authority in respect of any payment under this Agreement other than a stamp, registration, documentation or similar tax.

***“Tax Event”*** has the meaning specified in Section 5(h).

***“Tax Event Upon Merger”*** has the meaning specified in Section 5(h).

***“Terminated Transactions”*** means with respect to any Early Termination Date (a) if resulting from a Termination Event, all Affected Transactions and (b) if resulting from an Event of Default, all Transactions (in either case) in effect immediately before the effectiveness of the notice designating that Early Termination Date (or, if “Automatic Early Termination” applies, immediately before that Early Termination Date).

***“Termination Currency”*** has the meaning specified in the Schedule.

***“Termination Currency Equivalent”*** means, in respect of any amount denominated in the Termination Currency, such Termination Currency amount and, in respect of any amount denominated in a currency other than the Termination Currency (the “Other Currency”), the amount in the Termination Currency determined by the party making the relevant determination as being required to purchase such amount of such Other Currency as at the relevant Early Termination Date, or, if the relevant Market Quotation or Loss (as the case may be), is determined as of a later date, that later date, with the Termination Currency at the rate equal to the spot exchange rate of the foreign exchange agent (selected as provided below) for the purchase of such Other Currency with the Termination Currency at or about 11:00 a.m. (in the city in which such foreign exchange agent is located) on such date as would be customary for the determination of such a rate for the purchase of such Other Currency for value on the relevant Early Termination Date or that later date. The foreign exchange agent will, if only one party is obliged to make a determination under Section 6(e), be selected in good faith by that party and otherwise will be agreed by the parties.

***“Termination Event”*** means an Illegality, a Tax Event or a Tax Event Upon Merger or, if specified to be applicable, a Credit Event Upon Merger or an Additional Termination Event.

***“Termination Rate”*** means a rate per annum equal to the arithmetic mean of the cost (without proof or evidence of any actual cost) to each party (as certified by such party) if it were to fund or of funding such amounts.

***“Unpaid Amounts”*** owing to any party means, with respect to an Early Termination Date, the aggregate of (a) in respect of all Terminated Transactions, the amounts that became payable (or that would have become payable but for Section 2(a)(iii)) to such party under Section 2(a)(i) on or prior to such Early Termination Date and which remain unpaid as at such Early Termination Date and (b) in respect of each Terminated Transaction, for each obligation under Section 2(a)(i) which was (or would have been but for Section 2(a)(iii)) required to be settled by delivery to such party on or prior to such Early Termination Date and which has not been so settled as at such Early Termination Date, an amount equal to the fair market

value of that which was (or would have been) required to be delivered as of the originally scheduled date for delivery, in each case together with (to the extent permitted under applicable law) interest, in the currency of such amounts, from (and including) the date such amounts or obligations were or would have been required to have been paid or performed to (but excluding) such Early Termination Date, at the Applicable Rate. Such amounts of interest will be calculated on the basis of daily compounding and the actual number of days elapsed. The fair market value of any obligation referred to in clause (b) above shall be reasonably determined by the party obliged to make the determination under Section 6(e) or, if each party is so obliged, it shall be the average of the Termination Currency Equivalents of the fair market values reasonably determined by both parties.

IN WITNESS WHEREOF the parties have executed this document on the respective dates specified below with effect from the date specified on the first page of this document.

("Party A")  
Caisse des Depots et Consignations.  
(Name of Party)

By: .....  
Name: .....  
Title: .....  
Date: .....

("Party B")  
Lehman Brothers Special Financing  
(Name of Party)

By: Maureen C Daniels  
Name: Maureen C Daniels  
Title: Vice President  
Date: .....

(Multicurrency - Cross Border)

**ISDA**

**International Swap and Derivatives Associations, Inc.**

**SCHEDULE**

**to the**

**Master Agreement**

**dated as of July 29, 1994**

**between Caisse des Dépôts et Consignations ("Party A"), a public instrumentality  
organized under the laws of France and Lehman Brothers Special Financing Inc., a  
corporation organized under the laws of Delaware ("Party B").**

**Part 1. Termination Provisions**

(a) ***"Specified Entity"*** means in relation to Party A for the purpose of:-

Section 5(a)(v) Not Applicable (N/A)

Section 5(a)(vi) N/A

Section 5(a)(vii) N/A

Section 5(b)(iv) N/A

and in relation to Party B for the purpose of:-

Section 5(a)(v) Lehman Brothers Holdings Inc. ("Holdings")

Section 5(a)(vi) Holdings

Section 5(a)(vii) Holdings

Section 5(b)(iv) Holdings

(b) ***"Specified Transaction"*** will have the meaning specified in Section 14 of this Agreement.

28

(c) The "*Cross Default*" provisions of Section 5(a)(vi) will apply to Party A and Party B and to any Specified Entity and Credit Support Provider of Party B.

If such provisions apply:-

*"Specified Indebtedness"* will have the meaning specified in Section 14 of this Agreement.

*"Threshold Amount"* means with respect to Party A and Party B, \$20,000,000 (or the equivalent in any other currency).

(d) The "*Credit Event Upon Merger*" provisions of Section 5(b)(iv) will apply to Party A and to Party B and the Credit Support Provider and any Specified Entity of Party B in which case Party B will be the Affected Party.

(e) The "*Automatic Early Termination*" provision of Section 6(a) will not apply to Party A and will not apply to Party B.

(f) *Payments on Early Termination.* For the purpose of Section 6(e) of this Agreement:

(i) Market Quotation will apply.  
(ii) The Second Method will apply.

(g) "*Termination Currency*" means the currency selected by the non-Defaulting or the non-Affected Party, as the case may be or, in circumstances where there are two Affected Parties, the currency agreed between the Parties within 10 Business Days after which is a freely available contract currency in respect of, at least, one current Transaction. Provided, however, if no such agreement can be reached or if no such contract currency is freely available, the Termination Currency shall be United States Dollars. If U.S. Dollars are unavailable to satisfy the above, then such available convertible currency as Party A and Party B will reasonably agree.

(h) *Additional Termination Events.* It shall be an additional termination event under Section 5(b)(v) of the Master Agreement if Party B's Credit Support Provider, as defined in Part 4(g) of this Schedule, fails to maintain a rating of (i) Baa3 or higher as determined by Moody's Investors Service Inc. or (ii) BBB- or higher as determined by Standard & Poor's Corporation or (iii) an equivalent investment grade rating determined by a nationally recognized rating agency acceptable by both parties.

## Part 2. Tax Representations

*Representations of Party A:*

*SL*

(a) ***Payer Tax Representations.*** For the purpose of Section 3(e) of this Agreement, Party A will make the following representation:

It is not required by any applicable law, as modified by the practice of any relevant governmental revenue authority, of any Relevant Jurisdiction to make any deduction or withholding for or on account of any Tax from any payment (other than interest under Sections 2(e), 6(d)(ii) or 6(e) of the Agreement) to be made by it to the other party under this Agreement. In making this representation, it may rely on:

- (i) the accuracy of any representation made by the other party pursuant to Section 3(f) of this Agreement,
- (ii) the satisfaction of the agreement of the other party contained in Section 4(a)(i) or 4(a)(iii) of this Agreement and the accuracy and effectiveness of any document provided by the other party pursuant to Section 4(a)(i) or 4(a)(iii) of this Agreement; and
- (iii) the satisfaction of the agreement of the other party contained in Section 4(d) of this Agreement, provided that it shall not be a breach of this representation where reliance is placed on clause (ii) and the other party does not deliver a form or document under Section 4(a)(iii) by reason of material prejudice to its legal or commercial position.

(b) ***Payee Tax Representations.*** For the purpose of Section 3(f), Party A makes the following representation(s) specified below: NONE.

***Representations of Party B:***

(a) ***Payer Tax Representations.*** For the purpose of Section 3(e) of this Agreement, Party B will make the following representation:

It is not required by any applicable law, as modified by the practice of any relevant governmental revenue authority, of any Relevant Jurisdiction to make any deduction or withholding for or on account of any Tax from any payment (other than interest under Sections 2(e), 6(d)(ii) and 6(e) of the Agreement) to be made by it to the other party under this Agreement. In making this representation, it may rely on:

- (i) the accuracy of any representation made by the other party pursuant to Section 3(f) of this Agreement,
- (ii) the satisfaction of the agreement of the other party contained in Section 4(a)(i) or 4(a)(iii) of this Agreement and the accuracy and effectiveness of any document provided by the other party pursuant to Section 4(a)(i) or 4(a)(iii) of this Agreement, and

(iii) the satisfaction of the agreement of the other party contained in Section 4(d) of this Agreement, provided that it shall not be a breach of this representation where reliance is placed on clause (ii) and the other party does not deliver a form or document under Section 4(a)(iii) by reason of material prejudice to its legal or commercial position.

(b) **Payee Tax Representations.** For the purpose of Section 3(f), Party B makes the representation(s) specified below: **NONE.**

### **Part 3. Documents to be delivered**

For the purpose of Sections 4(a)(i) and (ii) of this Agreement, each party agrees to deliver the following documents applicable:-

(a) Tax forms, documents or certificates to be delivered are:-

<u>Party required to deliver document</u>	<u>Form/Document/ Certificate</u>	<u>Date by which to be delivered</u>
Party A and Party B	Such documents as may be reasonably requested by the other party to permit payments without (or with minimal) withholding of Tax.	As soon as reasonably practicable after written demand.

(b) Other documents to be delivered are:

(1) Evidence of the authority and true signature of signatories of this Agreement and each Confirmation on its behalf.

Party required to deliver: Party A & Party B

Date by which to be delivered: Upon execution of this Agreement.

Covered by Section 3(d) Representation: Yes

(2) Such other documents as the other party may reasonably request in connection with the Agreement and each Transaction.

Party required to deliver: Party A & Party B

Date by which to be delivered: Promptly upon request.

Covered by Section 3(d) Representation: Yes

24

(3) A duly executed Guaranty of the Guarantor of Party B substantially in the form of Exhibit I which is attached hereto and incorporated herein.

Party required to deliver: Party B

Date by which to be delivered: Upon execution of this Agreement.

Covered by Section 3(d) Representation: Yes

(4) Certificate of signing authority and specimen signatures of each individual executing the Guaranty of the Guarantor of Party B.

Party required to deliver: Party B

Date by which to be delivered: Upon execution of and delivery of the Guaranty of the Guarantor.

Covered by Section 3(d) Representation: Yes

(5) Such other written information, as is publicly available, respecting the condition or operations, financial or otherwise, of Party B (and any Specified Entity) as Party A may reasonably request from time to time.

Party required to deliver: Party B

Date by which to be delivered: Promptly upon request.

Covered by Section 3(d) Representation: Yes

#### Part 4. Miscellaneous

(a) *Addresses for Notices:* For the purpose of Section 12(a) of this Agreement:

Address for notices or communications to Party A where Party A has acted through its Paris office:

Address: Caisse des Dépôts et Consignations, 56 rue de Lille - 75356 Paris Cedex 07-France

Attention: Service FMP 20/Back Office Monétaire

Telex No.: 200055 Answerback: CAISSE A PARIS

Facsimile No.: 40 49 13 01

24

**Electronic Messaging System Details: N/A**

Address for notices or communications to Party A where Party A has acted through  
CDC Capital Inc. on behalf of its Paris office:

Address: Caisse des Dépôts et Consignations, c/o CDC Capital Inc., 9 West  
57th Street, 36th Floor, New York, NY 10019

Attention: Adrienne Lauer

Telex No.: N/A Answerback: N/A

Facsimile No.:212.891.6290 Telephone No.:212.891.6194

**Electronic Messaging System Details: N/A**

Address for notices or communications to Party B for all purposes:

Address: Lehman Brothers Special Financing, Inc., Derivative Products Dept.,  
3 World Financial Center, 7th Fl., New York, NY 10285-0700

Attention: Notice Generation

Telex No.:N/A Answerback:N/A

Facsimile No.:212.528.6927 Telephone No.:212.526.8586

Section 12(a) of this Agreement is hereby amended by (i) adding after the words "may not be given", the words "and shall not be effective if given"; and (ii) adding after the words "under Section 5 or 6" the words, "or Section 13(c)".

(b) ***Process Agent.*** For the purpose of Section 13(c) of this Agreement:

Party A appoints as its Process Agent: CDC Capital Inc., 9 West 57th Street, 36th  
Floor, New York, NY 10019.

Party B appoints as its Process Agent: N/A

(c) ***Offices.*** The provisions of Section 10(a) will not apply to this Agreement.

(d) ***Multibranch Party.*** For the purpose of Section 10(c) of this Agreement:

Party A is not a Multibranch Party.

Party B is not a Multibranch Party.

(e) ***Calculation Agent.*** The Calculation Agent is Party A, unless otherwise specified in a Confirmation in relation to the relevant Transaction.

(f) ***Credit Support Document.*** Details of any Credit Support Document:

"Credit Support Document" includes in relation to Party B (i) the Guarantee of Holdings, in substantially the form attached to this Agreement as Exhibit I (and Holdings is the Specified Entity with respect to such Guarantee). If an obligation of Party B under this Agreement is fully performed by Holdings, such obligation will be deemed to have been fully performed by Party B and (ii) the Master Pledge Agreement in the form annexed hereto as Exhibit II.

(g) ***Credit Support Provider.***

Credit Support Provider means in relation to Party A: N/A

Credit Support Provider means in relation to Party B: Holdings with respect to the Guarantee and Party B with respect to the Master Pledge Agreement.

(h) ***Governing Law.*** This Agreement will be governed by and construed in accordance with the law of the State of New York without reference to choice of law doctrine.

(i) ***Netting of Payments.*** Subparagraph (ii) of Section 2(c) of this Agreement will apply.

(j) ***"Affiliate"*** will have the meaning specified in Section 14 of this Agreement.

## Part 5. Other Provisions

(1) ***1991 ISDA Definitions.***

Reference is hereby made to the 1991 ISDA Definitions (the "1991 Definitions") published by the International Swap Dealers Association, Inc., which is hereby incorporated by reference herein. Any terms used and not otherwise defined in the Master Agreement or any Confirmation which are contained in the 1991 Definitions shall have the meaning set forth therein. Notwithstanding anything contained in the Master Agreement to the contrary, if the parties enter into any Specified Transaction, such Specified Transaction shall be subject to, governed by and construed in accordance with the terms of the Master Agreement unless the Confirmation thereto shall specifically state to the contrary. Each such Specified Transaction shall be a Transaction for the purposes of the Master Agreement.

(2) ***Inconsistency.***

In the event of any inconsistency between the provisions of this Schedule and the printed form of Agreement of which it is a part or the 1991 Definitions, the provisions set forth in this Schedule will prevail, and in the event of any inconsistency between the provisions of a Confirmation and this Schedule, the printed form of Agreement or the 1991 Definitions, the provisions set forth in the Confirmation will prevail.

(3) *Waiver of Right to Trial by Jury.*

Party A and Party B hereby irrevocably waive, to the fullest extent permitted by applicable law, any and all right to trial by jury with respect to any legal proceeding arising out of or relating to this Agreement or any Transaction contemplated hereby.

(4) *Effective Date.*

The parties hereto in consideration of the mutual agreements contained herein agree that this Agreement is deemed to be effective from the date specified on the front page of this Agreement.

(5) *Change of Account.*

Section 2(b) of this Agreement is hereby amended by the insertion of the following at the end thereof after the word "change":

" ; provided that if such new account shall not be in the same jurisdiction having the same power to tax as the original account, the party not changing its account shall not be obliged to pay any greater amounts and shall not receive less as a result of such change than would have been the case if such change had not taken place."

(6) *Cross default.*

The Cross default of Section 5(a)(vi) shall exclude any default that results solely from wire transfer difficulties or an error or omission of an administrative or operational nature (so long as sufficient funds are available), or from the general unavailability or non-transferability of the currency in which such Specified Indebtedness is denominated due to exchange controls or similar or other governmental action (but only if payment is made within three Business Days after such transfer difficulties have been corrected, the error or omission has been discovered or such currency becomes available).

(7) *Credit Event Upon Merger.*

It is expressly provided that notwithstanding any provision to the contrary in the Agreement, any changes in the organizational form of Party A shall not be construed as an event referred to in Section 5(b)(iv) if upon such event Party A shall be rated at least A by Standard and Poor's Corporation or by Moody's Investor Services, Inc.

23

(8) *Set-off.*

Nothing in this clause 8 shall be effective to create a charge or other security interest. Without affecting the provisions of the Agreement requiring the calculation of certain net payment amounts, all payments under this Agreement will be made without set-off or counterclaim; provided, however, that upon the designation or deemed designation of any Early Termination Date, in addition to and not in limitation of any other right or remedy including any right to set-off, counterclaim or otherwise withhold payment or any recourse to any Credit Support Document under applicable law the non-Defaulting Party or non-Affected Party (in either case, "X") may set-off any sum or obligation (whether or not arising under this Agreement and whether matured or unmatured) owed or due by the Defaulting Party or Affected Party (in either case, "Y") to X against any sum or obligation (whether or not arising under this Agreement and whether matured or unmatured) owed or due by X (the "Original Obligation") to Y, and for this purpose, may convert one currency into another at the rate of exchange at which X would be able, acting in a reasonable manner and in good faith, to purchase the relevant amount of such currency.

(9) *Escrow Payments.*

If by reason of the time difference between the cities in which payments are to be made, it is not possible for simultaneous payments to be made on any date on which both parties are required to make payments hereunder, either party may at its option and in its sole discretion notify the other party that payments on that date are to be made in escrow. In this case deposit of the payment due earlier on that date shall be made by 2:00 pm (local time at the place for the earlier payment) on that date with an escrow agent selected by the notifying party, accompanied by irrevocable payment instructions (a) to release the deposited payment to the intended recipient upon receipt by the escrow agent of the required deposit of the corresponding payment from the other party on the same date accompanied by irrevocable payment instructions to the same effect or (b) if the required deposit of the corresponding payment is not made on that same date, to return the payment deposited to the party that paid it into escrow. The party that elects to have payments made in escrow shall pay the costs of the escrow arrangements and shall cause those arrangements to provide that the intended recipient of the payment due to be deposited first shall be entitled to interest on that deposited payment for each day in the period of its deposit at the rate offered by the escrow agent for that day for overnight deposits in the relevant currency in the office where it holds that deposited payment at 11:00 am (local time on that date) if that payment is not released by 5:00 pm local time on the date it is deposited for any reason other than the intended recipient's failure to make the escrow deposit it is required to make hereunder in a timely fashion.

(10) *Calculation Agent.*

In the absence of gross negligence or willful misconduct by Party A in the execution of its duties as Calculation Agent, Party A shall have no liability for, or arising from, errors or omissions in the execution of such duties (other than for (a) amounts received by Party A as a result of any such error or omission and that would not otherwise have been payable to it

83

and (b) amounts not paid by Party A as a result of any such error or omission and that would otherwise have been payable by it). Amounts determined by the Calculation Agent shall, absent manifest error, be binding upon the parties.

(11) *Recorded Conversations.*

Each party may electronically record all telephonic conversations between them in connection with any Transaction under this Agreement.

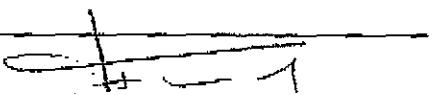
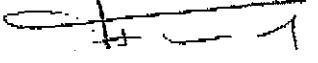
(12) *Additional Events of Default*

A new Section 5(a)(ix) shall be added to the Master Agreement to read as follows:

"(ix) If any Credit Support Document constituting a security agreement shall for any reason cease to create a valid and perfected lien on or security interest in any material portion of the collateral purported to be covered thereby prior and superior to all other liens, security interests, charges and encumbrances."

In **WITNESS WHEREOF**, the parties have executed this Schedule and Master Agreement by their duly authorized officers as of the date hereof.

**Caisse des Dépôts et Consignations**  
("Party A")

By:   
Name:   
Title: Philippe ANDRIEU  
Responsable  
du Service Post. Marché

**Lehman Brothers Special Financing Inc.**  
("Party B")

By: Maureen C. Daniels  
Name: Maureen C. Daniels  
Title: Vice President

# Exhibit B

EXHIBIT I

GUARANTEE OF LEHMAN BROTHERS HOLDINGS INC.

LEHMAN BROTHERS SPECIAL FINANCING INC. ("Party A") and CAISSE DES DEPOTS ET CONSIGNATIONS ("Party B") have entered into a Master Agreement dated as of July 29, 1994, pursuant to which Party A and Party B have entered and/or anticipate entering into one or more transactions (each a "Transaction"), the Confirmation of each of which supplements, forms part of, and will be read and construed as one with, the Master Agreement (collectively referred to as the "Agreement"). This Guarantee is a Credit Support Document as contemplated in the Agreement. For value received, and in consideration of the financial accommodation accorded to Party A by Party B under the Agreement, LEHMAN BROTHERS HOLDINGS INC., a corporation organized and existing under the laws of the State of Delaware ("Guarantor"), hereby agrees to the following:

(a) Guarantor hereby unconditionally guarantees to Party B the due and punctual payment of all amounts payable by Party A under each Transaction when and as Party A's obligations thereunder shall become due and payable in accordance with the terms of the Agreement. In case of the failure of Party A to pay punctually any such amounts, Guarantor hereby agrees, upon written demand by Party B, to pay or cause to be paid any such amounts punctually when and as the same shall become due and payable.

(b) Guarantor hereby agrees that its obligations under this Guarantee constitute a guarantee of payment when due and not of collection.

(c) Guarantor hereby agrees that its obligations under this Guarantee shall be unconditional, irrespective of the validity, regularity or enforceability of the Agreement against Party A (other than as a result of the unenforceability thereof against Party B), the absence of any action to enforce Party A's obligations under the Agreement, any waiver or consent by Party B with respect to any provisions thereof, the entry by Party A and Party B into additional Transactions under the Agreement or any other circumstance which might otherwise constitute a legal or equitable discharge or defense of a guarantor; provided, however, that Guarantor shall be entitled to exercise any right that Party A could have exercised under the Agreement to cure any default in respect of its obligations under the Agreement or to setoff, counterclaim or withhold payment in respect of any Event of Default or Potential Event of Default in respect of Party B or any Affiliate, but only to the extent such right is provided to Party A under the Agreement. The Guarantor acknowledges that Party A and Party B may from time to time enter into one or more Transactions pursuant to the Agreement and agrees that the obligations of the Guarantor under this Guarantee will upon the execution of any such Transaction by Party A and Party B extend to all such Transactions without the taking of further action by the Guarantor.

(d) Guarantor shall be subrogated to all rights of Party B against Party A in respect of any amounts paid by Guarantor pursuant to the provisions of this Guarantee; provided, however, that Guarantor shall not be entitled to enforce or to receive any payments arising out of, or based upon, such right of subrogation until all amounts then due and payable by Party A under the Agreement, shall have been paid in full.

(e) Guarantor further agrees that this Guarantee shall continue to be effective or be reinstated, as the case may be, if at any time, payment, or any part thereof, of any obligation or interest thereon is rescinded or must otherwise be restored by Party B upon an Event of Default as set forth in Section 5(a)(vii) of the Agreement affecting Party A or Guarantor.

(f) Guarantor hereby waives (i) promptness, diligence, presentment, demand of payment,

-2-

protest, order and, except as set forth in paragraph (a) hereof, notice of any kind in connection with the Agreement and this Guarantee, or (ii) any requirement that Party B exhaust any right to take any action against Party A or any other person prior to or contemporaneously with proceeding to exercise any right against Guarantor under this Guarantee.

Guarantor makes the same representations to and agreements with Party B as those made by Party A pursuant to Sections 3 and 4 of the Agreement, at the times set forth therein, except that references therein to "the party" will be deemed to be references to "the Guarantor" and references therein to "the Agreement" will be deemed to be references to "the Guarantee." Section 11 of the Agreement is incorporated by reference in this Guarantee except that references therein to "the Agreement" will be deemed to be references to "the Guarantee."

This Guarantee shall be governed by and construed in accordance with the laws of the State of New York, without reference to choice of law doctrine. All capitalized terms not defined in this Guarantee are defined in the Agreement.

Any notice hereunder will be sufficiently given if given in accordance with the provisions for notices under the Agreement and will be effective as set forth therein. All notices hereunder shall be delivered to Lehman Brothers Holdings Inc., Attention: Treasurer, at 3 World Financial Center, 28th Floor, New York, New York 10285 (Facsimile No. (212) 526-1467) with a copy to Lehman Brothers Special Financing Inc., Attention: Senior Vice President, at 3 World Financial Center, New York, New York 10285-0700 (Facsimile No. (212) 528-6927).

IN WITNESS WHEREOF, Guarantor has caused this Guarantee to be executed in its corporate name by its duly authorized officer as of the date of the Agreement.

LEHMAN BROTHERS HOLDINGS INC.

By: James F. Beck

Title: Assistant Vice President

# Exhibit C

**Exhibit II**

**MASTER PLEDGE AGREEMENT**, dated as of November 4, 1994, made by  
**LEHMAN BROTHERS SPECIAL FINANCING INC.** ("Pledgor") to **CAISSE DES  
DEPOTS ET CONSIGNATIONS** ("Pledgee").

Pledgor and Pledgee have entered into, or will enter into, that certain ISDA Master Agreement of even date herewith (the "Agreement") pursuant to which Pledgor and Pledgee may enter into Transactions (as defined therein) from time to time. Pledgor agrees to pledge and deliver collateral as security for its obligations under the Agreement pursuant to the terms of this Master Pledge Agreement (as amended from time to time, the "Pledge Agreement"). Each Confirmation of a Transaction shall constitute a supplement to, and be part of, the Agreement and the Pledge Agreement so that the Agreement (as supplemented by Confirmations of Transactions) and the Pledge Agreement (as supplemented by Confirmations of Transactions) will form a single Pledge Agreement between Pledgor and Pledgee.

Accordingly, the parties hereto agree as follows:

1. **Certain Definitions.** Unless otherwise defined herein, terms defined in the Agreement will have such defined meanings when used herein. In addition, as used in this Agreement, the following terms will have the following meanings.

"Aggregate Exposure Amount" means, as of an Exposure Calculation Date, the aggregate Market Quotation (as defined in the Agreement, except as expressly modified hereby) of all Transactions, plus an amount for each Transaction determined by multiplying (A) 0.75 by (B) the average remaining life of such Transaction by (C) the notional amount for such Transaction (indexed, if required by the Confirmation). For purposes hereof, the amount representing the Market Quotation of each Transaction for which Pledgee would on an Exposure Calculation Date receive a payment from Pledgor if such date were an Early Termination Date shall be expressed as a positive number and the market value of each Transaction for which Pledgor would on an Exposure Calculation Date receive a payment from Pledgee if such date were an Early Termination Date shall be deemed to be zero for purposes hereof. The Market Quotation of each Transaction shall be determined by Pledgor in good faith based on its mid-market quotation as of 3:00p.m., New York time (or earlier in the day if the markets relevant to such determination end business earlier on such day) on the Exposure Calculation Date, for a transaction with an effective date of the relevant Exposure Calculation Date having terms (including Unpaid Amounts) duplicating as nearly as possible the Transaction whose Market Quotation is being determined, provided, however, that if the Pledgee disputes the Market Quotation of any such Transaction it may submit value quotations from two (2) Reference Market-makers as prescribed under the definition of "Market Quotation" in the Agreement (notwithstanding the 11:00 a.m. New York time requirement of such definition, such quotations may be obtained within two (2) hours of the Pledgee's receipt of Pledgor's valuation), in which case the market value for such Transaction shall be the arithmetic mean of the three (3) valuations. "Exposure Amount" means, as of an Exposure Calculation Date, the market value

(if positive) of a single Transaction.

**"Aggregate Value of the Collateral"** means the sum of the adjusted fair market value of all the Collateral held by or on behalf of Pledgee with respect to all Transactions under which Pledgor shall then have any obligations to Pledgee. The fair market value of each item of Collateral shall be adjusted by multiplying it by 98% in the case of direct U.S. Government obligations, 95% in the case of direct agency obligations and such other percentage or percentages as may be agreed upon in writing by the Pledgor and the Pledgee in the case of all other obligations.

**"Collateral"** means all securities, obligations and other property (including cash) and all additions and substitutions therefor, all of a type agreed to in writing (which may include a Confirmation) by Pledgor and Pledgee, and proceeds thereof which are pledged to and received by Pledgee hereunder, together with all collections, income, distributions and claims in respect thereof, all proceeds of any of the foregoing and all powers and rights of the Pledgor now or hereafter acquired by the Pledgor, including rights of enforcement, under any or all of the foregoing.

**"Equivalent Collateral"** means, with respect to any Collateral, securities of the same class and issue, issuer, series and maturity and the same principal amount and, in the case of mortgage-backed securities, securities backed by the same pool of mortgages as the Collateral.

**"Exposure Calculation Date"** means the first and fifteenth day of each calendar month, or if any such day does not fall on a New York Banking Day, then the following day that is a New York Banking Day and such other date or dates (not exceeding four in number during any calendar month) which is a New York Banking Day and is selected by either party. A New York Banking Day is defined as a day in which banks are open for business in the State of New York and are not otherwise required by law to close.

**"Minimum Amount"** means \$250,000.

**"Net Aggregate Exposure Amount"** means the Aggregate Exposure Amount less the Unsecured Amount.

**"Unsecured Amount"** means \$0.

2. **Pledge.** Pledgor hereby grants to Pledgee Collateral, having a fair market value equal to the Net Aggregate Exposure Amount, and thereby grants to Pledgee a first lien on, and security interest in, such Collateral, as collateral security for the prompt and complete payment when due (whether on a Payment Date, on the Early Termination Date or otherwise) of all amounts payable by Pledgor to Pledgee pursuant to each Transaction and any other amount due or to become due by Pledgor to Pledgee pursuant to the Agreement (the "Obligations").

3. **Form of Collateral.** (a) With respect to any of the Collateral consisting of securities or obligations issued or guaranteed by the government of the United States of America

or any of its agencies or instrumentalities and available only in book-entry form by means of entries on the records of United States of America Federal Reserve Banks, Pledgor shall, unless otherwise provided in the related Confirmation or otherwise agreed to in writing by the Pledgor and the Pledgee, (i) in the case of non-mortgage-backed securities, cause such securities to be transferred pursuant to instructions of Pledgee or (ii) in the case of mortgage-backed securities, cause such securities to be transferred pursuant to instructions of Pledgee.

(b) With respect to any of the Collateral available in definitive, certificated form, Pledgor shall, unless otherwise provided in the related Confirmation or otherwise agreed to in writing by the Pledgor and the Pledgee, deliver (as instructed by Pledgee) to Pledgee or Pledgee's agent, the certificates for such collateral in suitable form for transfer or accompanied by duly executed instruments of transfer or appropriate undated powers of assignment thereof duly executed in blank. All deliveries of certificated securities shall be made to Pledgee or Pledgee's agent pursuant to instructions of Pledgee.

(c) With respect to all types of Collateral, the Pledgor shall take all steps available to it that would be necessary to create a perfected first security interest in such Collateral in favor of the Pledgee.

4. **Distributions, etc.** While this Agreement is in effect, unless there is an Event of Default or a Termination Event with respect to Pledgor or unless the Pledgor has failed to comply with any of its obligations hereunder, Pledgor shall be entitled to receive any income, dividends or interest (whether in the form of cash or otherwise), debenture, other debt instrument, stock certificate (including, without limitation, any certificate representing a distribution in connection with any reclassification, increase or reduction of capital, or issued in connection with any reorganization), option, rights or other property with respect to any of the Collateral and the same shall not constitute additional Collateral. Any sums paid upon or in respect of the Collateral upon the liquidation or dissolution of the issuer shall not constitute additional Collateral. All sums of money and property so paid or distributed in respect of the Collateral which are received by Pledgee shall, until paid or delivered to Pledgor, be held by Pledgee in trust for Pledgor. The Pledgee shall have no liability, however, for any failure by it to collect such payments not forwarded to it by the payor thereof.

5. **Adjustment of Collateral.** If the Aggregate Value of the Collateral, as of any Exposure Calculation Date, shall be less than the Net Aggregate Exposure Amount, then Pledgor shall, within two (2) New York Banking Days (as that term is defined in Section 1) after written demand by Pledgee or after first becoming aware of such fact, deliver to Pledgee, as Collateral, sufficient Collateral in conformity with Sections 2 and 3 hereof, so that, immediately after delivery of such Collateral, the Aggregate Value of the Collateral shall be at least equal to the Net Aggregate Exposure Amount, provided, however, that Pledgor shall not be required to deliver Collateral to Pledgee hereunder unless the amount to be delivered is at least the Minimum Amount. The Net Aggregate Exposure Amount shall be calculated by Pledgor, and the Aggregate Value of Collateral shall be determined by Pledgor on the basis of the closing sale prices for such Collateral as published in *The Wall Street Journal* with respect to such date (or, in the event no such quote is available, the most recent closing bid prices from a principal market

maker (other than Pledgor or any affiliate of Pledgor) selected, in good faith, by Pledgor) or in such other manner as the Pledgor and Pledgee shall agree, provided, however, that if Pledgee disputes the valuation of any Collateral by Pledgor, Pledgee may submit closing bid prices, as of such Exposure Calculation Date, quoted by two (2) other nationally-recognized sources, in which case, such value shall be the arithmetic mean of all three (3) closing bid prices. Otherwise, the calculations hereunder shall be binding upon Pledgee absent manifest error. If on any Exposure Calculation Date the aggregate amount of Collateral held by Pledgee shall exceed the Net Aggregate Exposure Amount, Pledgee shall, upon the written request of Pledgor, return to Pledgor, within two (2) New York Banking Days of the date of Pledgee's receipt of such request, such Collateral in an amount equal to such excess; provided, however, that Pledgee shall not be required to return Collateral to Pledgor hereunder unless the amount to be returned is at least the Minimum Amount. If the Net Aggregate Exposure Amount is zero on such Exposure Calculation Date, Pledgee shall return to Pledgor within two (2) New York Banking Day's of Pledgee's receipt of written request from the Pledgor, all Collateral then held by Pledgor.

6. **Rights of Pledgee.** Any or all of the Collateral held by Pledgee hereunder may, without notice, be registered in the name of Pledgee or its nominee. Pledgee or its nominee may thereafter upon two (2) New York Banking Days' written notice to Pledgor, exercise rights of conversion, exchange, subscription or any other rights, privileges or options with respect to such Collateral, as if it were the absolute owner thereof, all without liability except to account for property actually received by it, but the Pledgee shall have no duty to exercise any of the aforesaid rights, privileges or options and shall not be responsible for any failure to do so or delay in so doing. Pledgee hereby agrees that it shall not repledge, rehypothecate, reassign or enter into repurchase transactions (collectively, "Repurchase Transactions") with respect to any of the Collateral, nor shall Pledgee direct any agent acting on its behalf to enter into any such Repurchase Transactions using the Collateral during any period in which the Pledge Agreement remains in effect.

7. **Remedies.** In the event that any portion of the Obligations has become due and payable, and has not been paid, Pledgee may, upon written notice to Pledgor (which may be a telex, telegram, telecopy or other similar facsimile transmission and all of which Pledgor hereby agrees is reasonable notice within the meaning of Section 9-504(3) of the Uniform Commercial Code as in effect in the State of New York), collect the Collateral, or any part thereof, or may sell, assign, give options to purchase, contract to sell or otherwise dispose of and deliver said Collateral, or any part thereof, in one or more parcels at public or private sale or sales, at any exchange, broker's board or at any of Pledgee's offices or elsewhere, upon such terms and conditions as it may deem advisable and at such prices as it may deem best, for cash or on credit or for future delivery, without advertisement or demand upon the Pledgor, both of which are hereby waived by Pledgor, provided, however, that any such sale or disposal shall be in a commercially reasonable manner. Pledgor shall have the right to prevent any sale, assignment or other disposal of the Collateral by Pledgee by tendering to Pledgee, at any time prior to such sale, assignment or other disposal, the full amount due and payable to Pledgee with respect to the Obligations. Pledgee shall apply the net proceeds of any such collection or sale, after deducting all reasonable costs and expenses directly related to or incidental to the care and safekeeping of any or all the Collateral or otherwise or in any way relating to the rights of the Pledgee hereunder,

including reasonable attorneys' fees and legal expenses, to the payment in whole or in part of the Obligations; after so paying over such net proceeds and after the payment by Pledgee of any other amount required by any provision of law, Pledgee shall account for the surplus, if any, to Pledgor. In addition to the rights and remedies granted to it in this Pledge Agreement and in any other instrument or agreement securing, evidencing or relating to any of the Obligations, Pledgee shall have all rights and remedies of a secured party under the Uniform Commercial Code of the State of New York. Pledgor shall be liable for the deficiency if the proceeds of any sale or other disposition of the Collateral are insufficient to pay the entire amount of Obligation then owed by Pledgor to Pledgee and the fees of any attorneys employed by the Pledgee to realize upon such Collateral and collect such deficiency.

8. **Representations, Warranties and Agreements of Pledgor.** Pledgor represents to and agrees with Pledgee that (a) Pledgor is and will be the legal, beneficial and owner of record, and have good and marketable title to, the Collateral subject to no pledge, lien, mortgage, hypothecation, security interest, charge, option or other encumbrance whatsoever, except the lien and security interest in favor of pledgee created by this Pledge Agreement; and (b) the pledge, assignment and delivery of the Collateral pursuant to this Pledge Agreement will create a valid first lien on and a perfected first security interest in the Collateral as such Collateral is delivered to Pledgee, and the proceeds thereof, subject to no prior pledge, lien, mortgage hypothecation, security interest, charge, option or encumbrance, or to any agreement purporting to grant to any third party a security interest, charge, option or encumbrance, in the property or assets of any other pledgor which would include any Collateral. The Pledgor will defend Pledgee's right, title and security interest in and to the Collateral and the proceeds thereof against the claims and demands of all persons whomever. The representations made herein shall be made and deemed to be repeated at the times at which the representations of Pledgor in Section 3 of the Agreement are made and deemed to be repeated and also at the time Collateral is delivered to Pledgee pursuant to the terms hereof.

9. **No Disposition, etc.** Without the prior written consent of Pledgee, Pledgor agrees that it will not sell, assign, transfer, exchange, or otherwise dispose of or grant any option with respect to, the Collateral, nor will it create, incur or permit to exist any pledge, lien, mortgage, hypothecation, security interest, charge, option or any other encumbrance with respect to any of the Collateral, or any interest therein, or any proceeds thereof, except for the lien and security interest provided for by this Pledge Agreement.

10. **Specific Performance.** If Pledgee shall determine to exercise its right to sell any or all of the Collateral pursuant to Section 7 hereof, Pledgor agrees to render to Pledgee any assistance reasonably necessary to make such sale or sales of any portion or all of the Collateral valid and binding and in compliance with any and all courts, arbitrators or governmental instrumentalities, domestic or foreign, having jurisdiction over any such sale or sales, all at Pledgor's expense.

11. **Right of Substitution.** Upon written request of Pledgor to return Collateral to Pledgor, so long as no Event of Default or Termination Event with respect to the Pledgor shall have occurred and is continuing, with the prior written consent of Pledgee and so long as such

# Exhibit D

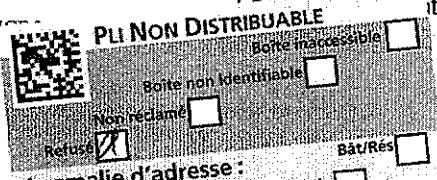
Executory Contracts and Unexpired Leases  
G: Derivative Contracts

Central Counterparty	Address 1	Address 2	Address 3	City	State	Zip	Country	Contract Description
c/o Blackrock Advisors, Inc.	40 E. 52nd Street, 18th Floor			New York	NY	10022	UNITED STATES	Derivative Master Account Number 1212030026
c/o Blackrock Advisors, Inc.	40 E. 52nd Street, 18th Floor			New York	NY	10022	UNITED STATES	Derivative Master Account Number 1212030027
c/o Blackrock Advisors, Inc.	40 E. 52nd Street, 18th Floor			New York	NY	10022	UNITED STATES	Derivative Master Account Number 1212030054
c/o Blackrock Advisors, Inc.	40 E. 52nd Street, 18th Floor			New York	NY	10022	UNITED STATES	Derivative Master Account Number 1212030025
c/o Blackrock Advisors, Inc.	40 E. 52nd Street, 18th Floor			New York	NY	10022	UNITED STATES	Derivative Master Account Number 031705DISP
c/o Blackrock Advisors, Inc.	40 E. 52nd Street, 18th Floor			New York	NY	10022	UNITED STATES	Derivative Master Account Number 1212030029
c/o Blackrock Advisors, Inc.	40 E. 52nd Street, 18th Floor			New York	NY	10022	UNITED STATES	Derivative Master Account Number 1212030010
c/o Blackrock Advisors, Inc.	40 E. 52nd Street, 18th Floor			New York	NY	10022	UNITED STATES	Derivative Master Account Number 1212030030
c/o Blackrock Advisors, Inc.	40 E. 52nd Street, 18th Floor			New York	NY	10022	UNITED STATES	Derivative Master Account Number 1212030041
c/o Merrill Lynch Investment Managers LLC	800 Scudders Mill Road			Plainsboro NJ		8536	UNITED STATES	Derivative Master Account Number 113005MLIS
c/o Putnam Investments	One Post Office Square	One Post Office Square		Boston	MA	2109	United States	Derivative Master Account Number 030607CRED
CAAM GLOBAL BOND FUND	168 Robinson Rd #22-03		Capital Towers 068912				Singapore	Derivative Master Account Number 092607CRED
CABLE & WIRELESS PLC SUPERANNUATION FUND	PIMCO	840 Newport Center Drive	Suite 100	Newport Beach	CA	92660	UNITED STATES	Derivative Master Account Number 100605CABW
Cadbury Corporation	2150 Route 38			Cherry Hill	NJ	08002-4302	United States	Derivative Master Account Number 112096CBP
CAIN BROTHERS & COMPANY LLC	452 Fifth Ave			New York	NY	10018	UNITED STATES	Derivative Master Account Number 121598CBB
Caisse d' Amortissement de la Dette Sociale	139, rue de Bercy		75572 Paris	Cedex 12			France	Derivative Master Account Number 121097CADL
CAISSE DE DEPOT ET PLACEMENT DU QUEBEC	1000, Place Jean Paul Riopelle			Montreal	QC	0	Canada	Derivative Master Account Number 052797QJON
CAISSE DES DEPOTS ET CONSIGNATIONS	56 rue de Lille		75356 Paris	Cedex 07			France	Derivative Master Account Number 080494CDDC

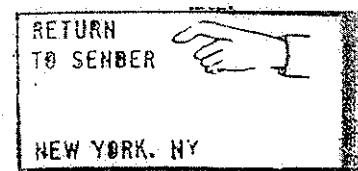
# Exhibit E

Epiq Bankruptcy Solutions, LLC  
757 Third Avenue, 3rd Floor  
New York, NY 10017

ADDRESS SERV



Legal Documents Enclosed -  
Please direct to the attention of the Addressee,  
or its Vice President.



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LBH (MERGE2.DBF,SCHED NO) SCHEDULE #: S88008400\*\*\*\*\*  
CAISSE DES DEPOTS ET CONSIGNATIONS  
56 RUE DE LILLE  
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# Exhibit 2

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

In re

X Chapter 11

LEHMAN BROTHERS HOLDING INC., et al.,

Case No. 08-13555 (JMP)

Debtors.

X (Jointly Administered)

**ORDER GRANTING CAISSE DES DÉPÔTS ET CONSIGNATIONS' MOTION  
TO PERMIT A LATE-FILED CLAIM PURSUANT  
TO FEDERAL RULE OF BANKRUPTCY PROCEDURE 9006(b)(1)**

Upon Caisse des Dépôts et Consignations' ("CDC") Motion to Permit a Late-Filed Claim and Questionnaires Pursuant to Federal Rule of Bankruptcy Procedure 9006(b)(1) (the "Motion")<sup>1</sup> requesting permission to file a late-filed claim and deem such claim timely-filed; and the Court having jurisdiction pursuant to sections 157 and 1334 of title 28, United States Code to consider the Motion and the relief requested therein; and the Debtors' cases having been automatically referred to this Court by the Standing Order of Reference from the United States District Court for the Southern District of New York dated July 10, 1984; and venue being proper in this Court pursuant to Sections 1408 and 1409 of title 28 of the United States Code; and due and proper notice of the Motion having been provided; and it appearing that no other or further notice is required; and the Court having heard argument on the record at the hearing before the Court, on July 20, 2011 (the "Hearing"); and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein, and after due deliberation and sufficient cause appearing therefor; it is hereby

**ORDERED** that the Motion is granted in its entirety; and it is further

**ORDERED** that to the extent any objections to the Motion have not been withdrawn or otherwise resolved, they are hereby overruled; and it is further

**ORDERED** that CDC shall file a proof of claim within 10 days of this Order, which proof of claim shall be deemed to have been timely filed; and it is further

<sup>1</sup> Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Motion.

**ORDERED** that the Debtors shall retain all of their rights to object to CDC's proof of claim on any basis other than timeliness, and that CDC shall retain all of its rights to respond to any such objection.

Dated: July \_\_, 2011  
New York, New York

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HONORABLE JAMES M. PECK  
UNITED STATES BANKRUPTCY JUDGE

## **Exhibit 2**



1

2 MOTION Pursuant to Section 8.4 of the Modified Third Amended  
3 Joint Chapter 11 Plan of Lehman Brothers Holdings Inc. and its  
4 Affiliated Debtors and Sections 105(a), 502(c) and 1142(b) of  
5 the Bankruptcy Code to Estimate the Amount of Claims filed by  
6 Indenture Trustee on Behalf of Issuers of Residential Mortgage-  
7 Backed Securities for Purposes of Establishing Reserves [ECF  
8 No. 24254]

9

10 MOTION of Lehman Brothers Holdings Inc. for Authority to Use  
11 Non-Cash Assets in Lieu of Available Cash as Reserves for  
12 Disputed Claims Pursuant to Section 8.4 of the Debtors'  
13 Confirmed Chapter 11 Plan [ECF No. 24726]

14

15 DEBTORS' Two Hundred Twenty-First Omnibus Objection to Claims  
16 (Duplicative of Indenture Trustee Claims) [ECF No. 20860]

17

18 MOTION of Jeremy R. Kramer for Reconsideration of the  
19 Reclassifications of His Compensation Claim as an Equity  
20 Interest [ECF No. 25307]

21

22 MOTION of Caisse Des Depots Et Consignations to Permit a Late-  
23 Filed Claim Against Lehman Brothers Special Financing Inc. [ECF  
24 No. 18039]

25

1

2 SYMPHONY ASSET MANAGEMENT LLC's Motions to Deem Proof of Claim  
3 Timely Filed {ECF Nos. 12074, 12075, 12076 and 12078] (This  
4 matter has been adjourned to March 22, 2012 at 10:00 a.m.)

5

6 DEBTORS' Twenty-Eighth Omnibus Objection to Claims (Valued  
7 Derivative Claims) [ECF No. 9983] (This matter has been  
8 adjourned to March 22, 2012 at 10:00 a.m.)

9

10 DEBTORS' Thirty-Fourth Omnibus Objection to Claims  
11 (Misclassified Claims) [ECF No. 10286] (This matter has been  
12 adjourned to April 26, 2012 at 10:00 a.m.)

13

14 DEBTORS' Thirty-Fifth Omnibus Objection to Claims (Valued  
15 Derivative Claims) [ECF No. 11260] (This matter has been  
16 adjourned to March 22, 2012 at 10:00 a.m.)

17

18 DEBTORS' Fortieth Omnibus Objection to Claims (Late-Filed  
19 Claims) [ECF No. 11305] (The hearing on the claims listed on  
20 Exhibit 1 has been adjourned to March 22, 2012 at 10:00 a.m.)

21

22 DEBTORS' Forty-First Omnibus Objection to Claims (Late-Filed  
23 Claims) [ECF No. 11306] (The hearing on the claims listed on  
24 Exhibit 2 is adjourned to March 22, 2012 at 10:00 a.m.)

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2 DEBTORS' Forty-Second Omnibus Objection to Claims (Late-Filed  
3 Lehman Programs Securities Claims) [ECF No. 11307] (The hearing  
4 on the claims listed on Exhibit 3 is adjourned to March 22,  
5 2012 at 10:00 a.m.)

6

7 DEBTORS' Forty-Third Omnibus Objection to Claims (Late-Filed  
8 Lehman Programs Securities Claims) [ECF No. 11308] (The hearing  
9 on the claims listed on Exhibit 4 has been adjourned to March  
10 22, 2012 at 10:00 a.m.)

11

12 DEBTORS' Sixty-Third Omnibus Objection to Claims (Valued  
13 Derivative Claims) [ECF No. 11978] (This matter has been  
14 adjourned to March 22, 2012 at 10:00 a.m.)

15

16 MOTION of John Dmuchowski to Permit Filing of Claims as of  
17 September 23, 2009 [ECF No. 12006] (This matter has been  
18 adjourned to March 22, 2012 at 10:00 a.m.)

19

20 CATHAY UNITED BANK'S Response in Opposition to Debtors'  
21 Fortieth Omnibus Objection to Claims (Late-Filed Claims) as to  
22 Claim No. 35181 and Motion to Have Claim No. 35181 Deemed  
23 Timely Filed [ECF No. 12037] (This matter is adjourned.)

24

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2 MOTION of Pearl Assurance Limited to Deem Proofs of Claim to Be  
3 Timely Filed [ECF No. 12072] (This matter is adjourned.)

4

5 DEBTORS' Seventy-First Omnibus Objection to Claims (Valued  
6 Derivative Claims) [ECF No. 13230] (This matter has been  
7 adjourned to March 22, 2012 at 10:00 a.m.)

8

9 DEBTORS' Eighty-Fourth Omnibus Objection to Claims (Valued  
10 Derivative Claims) [ECF No. 13955] (This matter has been  
11 adjourned to March 22, 2012 at 10:00 a.m.)

12

13 DEBTORS' Eighty-Sixth Omnibus Objection to Claims (No Liability  
14 Claims) [ECF No. 14440] (The hearing on the claims listed on  
15 Exhibit 5 is adjourned to May 31, 2012 at 10:00 a.m.)

16

17 DEBTORS' Eighty-Seventh Omnibus Objection to Claims (No  
18 Liability Claims) [ECF No. 14442] (The hearing on the claims  
19 listed on Exhibit 6 is adjourned to May 31, 2012 at 10:00 a.m.)

20

21 DEBTORS' Eighty-Eighth Omnibus Objection to Claims (No  
22 Liability Claims) [ECF No. 14450] (The hearing on the claims  
23 listed on Exhibit 7 is adjourned to May 31, 2012 at 10:00 a.m.)

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2 DEBTORS' Eighty-Ninth Omnibus Objection to Claims (No Liability  
3 Claims) [ECF No. 14452] (The hearing on the claims listed on  
4 Exhibit 8 is adjourned to May 31, 2012 at 10:00 a.m.)

5

6 DEBTORS' Ninetieth Omnibus Objection to Claims (No Liability  
7 Claims) [ECF No. 14453] (The hearing on the claims listed on  
8 Exhibit 9 is adjourned to May 31, 2012 at 10:00 a.m.)

9

10 DEBTORS' Ninety-Second Omnibus Objection to Claims (No Blocking  
11 Number LPS Claims) [ECF No. 14472] (The hearing on the  
12 Objection as to claims listed on Exhibit 10 is adjourned to  
13 March 22, 2012 at 10:00 a.m.)

14

15 DEBTORS' Ninety-Fifth Omnibus Objection to Claims (Valued  
16 Derivative Claims) [ECF No. 14490] (This matter has been  
17 adjourned to March 22, 2012 at 10:00 a.m.)

18

19 DEBTORS' Ninety-Sixth Omnibus Objection to Claims (Duplicative  
20 LPS Claims) [ECF No. 14491] (This matter has been adjourned to  
21 March 22, 2012 at 10:00 a.m. as to the claim on Exhibit 11  
22 attached hereto.)

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2 DEBTORS' Ninety-Seventh Omnibus Objection to Claims

3 (Insufficient Documentation) [ECF No. 14492] (The hearing on  
4 the objection to the claims identified on Exhibit 12 has been  
5 adjourned to March 22, 2012 at 10:00 a.m.)

6

7 DEBTORS' One Hundred Third Omnibus Objection to Claims (Valued  
8 Derivative Claims) [ECF No. 15003] (This matter has been  
9 adjourned to March 22, 2012 at 10:00 a.m.)

10

11 DEBTORS' One Hundred Tenth Omnibus Objection to Claims (Pension  
12 Claims) [ECF No. 15010] (The Debtors have withdrawn without  
13 prejudice their objections as to claim number 5343 of Edward  
14 Lill and claim number 9581 of Richard Locke [ECF No. 25328].  
15 The hearing on the objection to the claims identified on  
16 Exhibit 13 has been adjourned to March 22, 2012 at 10:00 a.m.)

17

18 DEBTORS' One Hundred Eleventh Omnibus Objection to Claims (No  
19 Liability Claims) [ECF No. 14491] (This matter is not going  
20 forward. The hearing on the objection to the claims identified  
21 on Exhibit 14 has been adjourned to March 22, 2012 at 10:00  
22 a.m.)

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2 DEBTORS' One Hundred Twelfth Omnibus Objection to Claims  
3 (Invalid Blocking Number LPS Claims) [ECF No. 15014] (This  
4 matter has been adjourned to March 22, 2012 at 10:00 a.m. as to  
5 the claims on Exhibit 15 attached hereto.)

6

7 DEBTORS' One Hundred Seventeenth Omnibus Objection to Claims  
8 (No Liability Non-Debtor Employee Claims) [ECF No. 15363] (This  
9 matter has been adjourned to March 22, 2012 at 10:00 a.m. as to  
10 the claims on Exhibit 16 attached hereto.)

11

12 DEBTORS' One Hundred Twentieth Omnibus Objection to Claims (No  
13 Blocking Number LPS Claims) [ECF No. 16074] (The hearing on the  
14 Objection as to the Unresolved Response is adjourned to March  
15 22, 2012 at 10:00 a.m.)

16

17 DEBTORS' One Hundred Twenty-First Omnibus Objection to Claims  
18 (To Reclassify Proofs of Claim as an Equity Interest) [ECF No.  
19 16075] (The hearing on the objection to the claims identified  
20 on Exhibit 17 has been adjourned to March 22, 2012 at 10:00  
21 a.m.)

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2 DEBTORS' One Hundred Twenty-Second Omnibus Objection to Claims  
3 (No Liability Claims) [ECF No. 16046] (The hearing on the  
4 claims listed on Exhibit 18 is adjourned to April 26, 2012 at  
5 10:00 a.m.)

6

7 DEBTORS' One Hundred Twenty-Fifth Omnibus Objection to Claims  
8 (Insufficient Documentation) [ECF No. 16079] (This matter has  
9 been adjourned to March 22, 2012 at 10:00 a.m.)

10

11 DEBTORS' One Hundred Twenty-Ninth Omnibus Objection to Claims  
12 (No Liability Derivatives Claims) [ECF No. 16114] (This matter  
13 has been adjourned to March 22, 2012 at 10:00 a.m.)

14

15 DEBTORS' One Hundred Thirty-Second Omnibus Objection to Claims  
16 (Valued Derivatives Claims) [ECF No. 16117] (This matter has  
17 been adjourned to March 22, 2012 at 10:00 a.m.)

18

19 DEBTORS' One Hundred Thirty-Sixth Omnibus Objection to Claims  
20 (Misclassified Claims) [ECF No. 16867] (The hearing on the  
21 objection to the claims identified on Exhibit 19 has been  
22 adjourned to March 22, 2012 at 10:00 a.m.)

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2 DEBTORS' One Hundred Thirty-Eighth Omnibus Objection to Claims  
3 (No Liability Derivatives Claims) [ECF No. 16865] (This matter  
4 has been adjourned to March 22, 2012 at 10:00 a.m.)

5

6 DEBTORS' One Hundred Fortieth Omnibus Objection to Claims  
7 (Duplicative of Indenture Trustee Claims) [ECF No. 16853] (The  
8 hearing on the claims of Banque Safdie (Claim No. 33557) and  
9 Glitnir Banki hf (Claim No. 27419) is adjourned to March 22,  
10 2012 at 10:00 a.m.)

11

12 DEBTORS' One Hundred Forty-Third Omnibus Objection to Claims  
13 (Late-Filed Claims) [ECF No. 16856] (The hearing on the  
14 Objection to the claims listed on Exhibit 20 is adjourned to  
15 March 22, 2012 at 10:00 a.m.)

16

17 DEBTORS' One Hundred Fifty-First Omnibus Objection to Claims  
18 (No Liability Claims) [ECF No. 17478] (The hearing on the  
19 claims listed on Exhibit 21 is adjourned to April 26, 2012 at  
20 10:00 a.m.)

21

22 DEBTORS' One Hundred Fifty-Fifth Omnibus Objection to Claims  
23 (Valued Derivatives Claims) [ECF No. 17468] (This matter has  
24 been adjourned to March 22, 2012 at 10:00 a.m.)

25

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2 DEBTORS' One Hundred Fifty-Sixth Omnibus Objection to Claims  
3 (No Liability Derivatives Claims) [ECF No. 17469] (This matter  
4 has been adjourned to March 22, 2012 at 10:00 a.m.)

5

6 DEBTORS' Objection to Proofs of Claim Filed by 2138747 Ontario  
7 Ltd. and 6785778 Canada Inc. (Claim Nos. 33583 and 33586) [ECF  
8 No. 18397] (The hearing on the Objection has been adjourned to  
9 March 22, 2012 at 10:00 a.m.)

10

11 DEBTORS' One Hundred Fifty-Eighth Omnibus Objection to Claims  
12 (Late-Filed Claims) [ECF No. 18399] (The hearing on the  
13 Objection as to the claims of Deborah Focht (Claim Nos. 34381,  
14 42915, 42916) has been adjourned to March 22, 2012 at 10:00  
15 a.m.)

16

17 DEBTORS' One Hundred Fifty-Ninth Omnibus Objection to Claims  
18 (Invalid Blocking Number LPS Claims) [ECF No. 18407] (The  
19 hearing on the Objection as to the claim of Corner Banca SA  
20 (Claim No. 45218) has been adjourned to March 22, 2012 at 10:00  
21 a.m.)

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2 DEBTORS' One Hundred Sixtieth Omnibus Objection to Claims  
3 (Settled Derivatives Claims) [ECF No. 18444] (The hearing on  
4 the Objection as to the claims of HBK Master Fund L.P. (Claim  
5 Nos. 19275 and 19276) has been adjourned to March 22, 2012 at  
6 10:00 a.m.)

7

8 DEBTORS' One Hundred Sixty-Second Omnibus Objection to Claims  
9 (Valued Derivatives Claims) [ECF No. 18405] (This matter has  
10 been adjourned to March 22, 2012 at 10:00 a.m.)

11

12 DEBTORS' One Hundred Sixty-Third Omnibus Objection to Claims  
13 (No Liability Derivatives Claims) [ECF No. 18409] (This matter  
14 has been adjourned to March 22, 2012 at 10:00 a.m.)

15

16 DEBTORS' One Hundred Seventy-Third Omnibus Objection to Claims  
17 (No Liability Employee Claims) [ECF No. 19399] (The hearing on  
18 the objection to claims identified on Exhibit 22 has been  
19 adjourned to March 22, 2012 at 10:00 a.m.)

20

21 DEBTORS' One Hundred Seventy-Fourth Omnibus Objection to Claims  
22 (To Reclassify Proofs of Claim as Equity Interests) [ECF No.  
23 19390] (The hearing on the objection to the claims identified  
24 on Exhibit 23 has been adjourned to March 22, 2012 at 10:00  
25 a.m.)

1

2 DEBTORS' One Hundred Seventy-Fifth Omnibus Objection to Claims  
3 (No Liability Pension Claims) [ECF No. 19391] (The hearing on  
4 the objection to the claims identified on Exhibit 24 has been  
5 adjourned to March 22, 2012 at 10:00 a.m.)

6

7 DEBTORS' One Hundred Seventy-Seventh Omnibus Objection to  
8 Claims (No Liability Non-Debtor Employee Claims) [ECF No.  
9 19393] (The hearing on the objection to the claims identified  
10 on Exhibit 25 has been adjourned to March 22, 2012 at 10:00  
11 a.m.)

12

13 DEBTORS' One Hundred Seventy-Eighth Omnibus Objection to Claims  
14 (Misclassified Claims) [ECF No. 19377] (The hearing on the  
15 objection to the claims identified on Exhibit 26 has been  
16 adjourned to March 22, 2012 at 10:00 a.m.)

17

18 DEBTORS' One Hundred Seventy-Ninth Omnibus Objection to Claims  
19 (No Liability Derivatives Claims) [ECF No. 19378] (This matter  
20 has been adjourned to March 22, 2012 at 10:00 a.m.)

21

22 DEBTORS' One Hundred Eighty-Second Omnibus Objection to Claims  
23 (Valued Derivatives Claims) [ECF No. 19398] (This matter has  
24 been adjourned to March 22, 2012 at 10:00 a.m.)

25

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2 DEBTORS' One Hundred Eighty-Third Omnibus Objection to Claims  
3 (No Liability CMBS Claims) [ECF No. 19407] (This matter has  
4 been adjourned to June 28, 2012 at 10:00 a.m.)

5

6 DEBTORS' One Hundred Eighty-Fifth Omnibus Objection to Claims  
7 (Compound Claims) [ECF No. 19714] (The Debtors have withdrawn  
8 without prejudice their objections as to claim number 94952  
9 (Anthony Nahum) [ECF No. 25244]. The hearing on the objection  
10 to the claims identified on Exhibit 27 has been adjourned to  
11 March 22, 2012 at 10:00 a.m.)

12

13 DEBTORS' One Hundred and Eighty-Sixth Omnibus Objection to  
14 Claims (Misclassified Claims) [ECF No. 19816] (The hearing on  
15 the objection has been adjourned to June 28, 2012 at 10:00  
16 a.m.)

17

18 DEBTORS' One Hundred and Eighty-Seventh Omnibus Objection to  
19 Claims (Misclassified Claims) [ECF No. 19817] (The hearing on  
20 the objection has been adjourned to June 28, 2012 at 10:00  
21 a.m.)

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2 DEBTORS' One Hundred and Eighty-Eighth Omnibus Objection to  
3 Claims (Duplicative LPS Claims) [Docket No. 19871] (This matter  
4 has been adjourned to March 22, 2012 at 10:00 a.m. as to the  
5 claims on Exhibit 28 attached hereto.)

6

7 DEBTORS' One Hundred and Eighty-Ninth Omnibus Objection to  
8 Claims (No Liability Repo Claims) [ECF No. 19870] (The hearing  
9 on the Unresolved Responses has been adjourned to March 22,  
10 2012 at 10:00 a.m.)

11

12 DEBTORS' One Hundred Ninetieth Omnibus Objection to Claims (No  
13 Liability Security Claims) [ECF No. 19873] (The hearing on the  
14 Unresolved Response has been adjourned to March 22, 2012 at  
15 10:00 a.m.)

16

17 DEBTORS' One Hundred and Ninety-First Omnibus Objection to  
18 Claims (Valued Derivatives Claims) [ECF No. 19888] (This matter  
19 has been adjourned to March 22, 2012 at 10:00 a.m.)

20

21 DEBTORS' One Hundred Ninety-Second Omnibus Objection to Claims  
22 (Partially Settled Guarantee Claims) [ECF No. 19875] (The  
23 hearing on the Objection as to the claim of Red River HYPI,  
24 L.P. and JP Morgan Chase Bank, N.A. (Claim No. 22276) is  
25 adjourned to April 26, 2012 at 10:00 a.m.)

1

2 DEBTORS' One Hundred and Ninety-Eighth Omnibus Objection to  
3 Claims (Late-Filed Claims) [ECF No. 19902] (The hearing on the  
4 Objection as to the Unresolved Responses is adjourned to March  
5 22, 2012 at 10:00 a.m.)

6

7 DEBTORS' One Hundred and Ninety-Ninth Omnibus Objection to  
8 Claims (No Liability Claims) [ECF No. 19903] (The hearing on  
9 the Unresolved Responses is adjourned to April 26, 2012 at  
10 10:00 a.m.)

11

12 DEBTORS' Two Hundredth Omnibus Objection to Claims (No  
13 Liability Claims) [ECF No. 19921] (The hearing on the  
14 Unresolved Responses and the claim of Paul, Weiss, Rifkind,  
15 Wharton & Garrison, LLP (Claim No. 14176) is adjourned to March  
16 22, 2012 at 10:00 a.m.)

17

18 DEBTORS' Objection to Proof of Claim No. 66099 Filed by Syncora  
19 Guarantee, Inc. [ECF No. 20087] (The hearing on the objection  
20 to the claim identified above has been adjourned to March 22,  
21 2012 at 10:00 a.m.)

22

23 DEBTORS' Objection to Proof of Claim Number 29702 [ECF No.  
24 20100] (The hearing has been adjourned to March 22, 2012 at  
25 10:00 a.m.)

1

2 DEBTORS' Two Hundred Nineteenth Omnibus Objection to Claims  
3 (Valued Derivatives Claims) [ECF No. 20787] (This matter has  
4 been adjourned to March 22, 2012 at 10:00 a.m.)

5

6 DEBTORS' Objection to Claim Nos. 22886, 23011, 23024  
7 (Duplicative of Indenture Trustee Claims) [ECF No. 20836] (This  
8 matter has been adjourned to March 22, 2012 at 10:00 a.m.)

9

10 DEBTORS' Two Hundred Twenty-Fourth Omnibus Objection to Claims  
11 (Late-Filed Claims) [ECF No. 20864] (This matter has been  
12 adjourned to March 22, 2012.)

13

14 DEBTORS' Two Hundred Twenty-Eighth Omnibus Objection to Claims  
15 (No Liability Derivatives Claims) [ECF No. 20886] (This matter  
16 has been adjourned to March 22, 2012 at 10 a.m.)

17

18 DEBTORS' Two Hundred Thirty-Second Omnibus Objection to Claims  
19 (Valued Derivatives Claims) [ECF No. 21727] (This matter has  
20 been adjourned to March 22, 2012 at 10 a.m.)

21

22 DEBTORS' Two Hundred Thirty-Third Omnibus Objection to Claims  
23 (Valued Derivatives Claims) [ECF No. 21727] (This matter has  
24 been adjourned to March 22, 2012 at 10 a.m.)

25

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2 DEBTORS' Two Hundred Forty-Seventh Omnibus Objection to Claims  
3 (No Liability Claims) [ECF No. 21727] (The hearing on the  
4 objection to the claims identified on Exhibit 29 has been  
5 adjourned to March 22, 2012 at 10 a.m.)

6

7 DEBTORS' Two Hundred Thirty-Eighth Omnibus Objection to Claims  
8 (Late-Filed Claims) [ECF No. 23242] (The hearing on the  
9 Objection as to the Unresolved Response is adjourned to March  
10 22, 2012 at 10 a.m.)

11

12 DEBTORS' Two Hundred Forty-First Omnibus Objection to Claims  
13 (No Liability Claims) [ECF No. 23247] (The hearing on the  
14 Objection as to the claims listed on Exhibit 30 has been  
15 adjourned to March 26 (sic), 2012 at 10 a.m.)

16

17 DEBTORS' Two Hundred Forty-Sixth Omnibus Objection to Claims  
18 (Valued Derivatives Claims) [ECF No. 23253] (This matter has  
19 been adjourned to March 22, 2012 at 10 a.m.)

20

21 DEBTORS' Two Hundred Forty-Fifth Omnibus Objection to Claims  
22 (No Liability Claims) [ECF No. 23251] (This matter has been  
23 adjourned to March 22, 2012 at 10 a.m.)

24

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2 DEBTORS' Objection to the Claim of American Investors Life  
3 Insurance Co., Inc. (Claim No. 65963) [ECF No. 24110] (The  
4 hearing on the Objection has been adjourned to March 22, 2012  
5 at 10 a.m.)

6

7 OMNIBUS Application of (I) Individual Members of Official  
8 Committee of Unsecured Creditors and (II) Indenture Trustees  
9 Pursuant to Section 1129(a)(4), or, Alternatively, Sections  
10 503(b)(3) and 503(b)(4) of the Bankruptcy Code for Payment of  
11 Fees and Reimbursement of Expenses [ECF No. 24762] (The hearing  
12 on the Objection has been adjourned to March 22, 2102 at 10:00  
13 a.m.)

14

15 LEHMAN BROTHERS HOLDINGS INC.'s and Creditors' Committee's Two  
16 Hundred Twenty-Ninth Omnibus Objection to JPMorgan's Asset  
17 Management Fund Claims (No Liability, Misclassified and  
18 Duplicative Claims) [ECF No, 21293] (This matter has been  
19 resolved.)

20

21 MOTION of Pictet & Cie and Bank Julius Baer & Co. Ltd. to  
22 Enlarge the Time Period for the Filing of Claim Number 64249 by  
23 One Day [ECF No. 21979} (This matter has been withdrawn.)

24

25 Transcribed by: Sara Davis

1

2 A P P E A R A N C E S :

3 WEIL GOTSHAL & MANGES LLP

4 Attorneys for Debtors and

5 Debtors-in-Possession

6 767 Fifth Avenue

7 New York, NY 10153

8

9 BY: GARRETT A. FAIL, ESQ.

10 MARK BERNSTEIN, ESQ.

11 LORI R. FIFE, ESQ.

12

13

14 WEIL GOTSHAL & MANGES LLP

15 Attorneys for Debtors and

16 Debtors-in-Possession

17 200 Crescent Court

18 Suite 300

19 Dallas, TX 75201

20

21 BY: ERIN D. ECKOLS, ESQ.

22 MATTHIAS KLEINSASSER, ESQ.

23

24

25

1

2 SILVERMAN ACAMPORA LLP

3 Attorneys for Caisse Des Depots

4 et Consignations

5 100 Jericho Quadrangle

6 Suite 300

7 Jericho, NY 11753

8

9 BY: JAY S. HELLMAN, ESQ.

10 BRETT S. SILVERMAN, ESQ.

11

12

13 THE MICHAELSON LAW FIRM

14 Attorneys for Morgan Lawrence (ph.),

15 Nicole Lawrence (ph.), Brian Monahan (ph.),

16 Donald Borghuna (ph.)

17 11 Broadway, Suite 615

18 New York, NY 10004

19

20 BY: ROBERT N. MICHAELSON, ESQ.

21

22

23

24

25

1

2 HINCKLEY ALLEN SNYDER LLP

3 Attorneys for Citibank &

4 Wilmington Trust

5 28 State Street

6 Boston, MA 02109

7

8 BY: JENNIFER V. DORAN, ESQ.

9

10 CHAPMAN & CUTLER LLP

11 Attorneys for U.S. Bank, N.A., as Trustee

12 111 West Monroe Street

13 Chicago, IL 60603

14

15 BY: FRANKLIN H. TOP III, ESQ.

16 JAMES HEISER, ESQ. (TELEPHONICALLY)

17

18 MILBANK TWEED HADLEY & MCCLOY LLP

19 Attorneys for the Official Committee

20 of Unsecured Creditors

21 One Chase Manhattan Plaza

22 New York, NY 10005

23

24 BY: EVAN R. FLECK, ESQ.

25

1

2 LOEB & LOEB LLP

3 Attorneys for Wells Fargo Bank

4 345 Park Avenue

5 New York, NY 10154

6

7 BY: WALTER H. CHURCHAK, ESQ.

8

9

10 NIXON PEABODY LLP

11 Attorneys for Deutsche Bank National

12 Trust Co. as Trustee

13 437 Madison Avenue

14 New York, NY 10022

15

16 BY: CHRISTOPHER M. DESIDERIO, ESQ.

17

18

19 KAPLAN & LANDAU LLP

20 Attorneys for Jeremy Kramer

21 1005 Avenue of the Americas

22 27th Floor

23 New York, NY 10018

24

25 BY: EUGENE N. KAPLAN, ESQ.

1

2 ALVAREZ & MARSAL NORTH AMERICA, LLC

3 Senior Vice-President and Co-Treasurer

4 of Lehman Brothers Holdings Inc.

5 600 Lexington Avenue

6 6th Floor

7 New York, NY 10022

8

9 BY: STEVEN J. COHN

10

11 GITLIN & COMPANY, LLC

12 Chairman of Fee Committee

13 1 State Street, #1750

14 Hartford, COURT 06103

15

16 BY: RICHARD A. GITLIN

17

18 STUTMAN TREISTER & GLATT

19 Attorneys for The Baupost Group

20 BY: MICHAEL NEUMEISTER, ESQ. (TELEPHONICALLY)

21 JEFFREY H. DAVIDSON, ESQ. (TELEPHONICALLY)

22

23 GENOVESE JOBLOVE & BATTISTA PA

24 Attorneys for Jamie H. Murcia

25 BY: ROBERT F. ELGIDELY, ESQ. (TELEPHONICALLY)

1

2 AKIN GUMP STRAUSS HAUER & FIELD LLP

3 Attorneys for Sunshine Enterprises, LP

4 BY: NATALIE E. LEVINE, ESQ. (TELEPHONICALLY)

5

6 CLEARY GOTTLIEB STEEN & HAMILTON LLP

7 Attorneys for Goldman Sachs Bank, USA

8 and Goldman Sachs International, LP

9 BY: BENJAMIN MEEKS, ESQ. (TELEPHONICALLY)

10

11 MONARD-D'HULST ADVOCATEN

12 Attorneys for Roger VanDebroek

13 BY: THOMAS VANDERSMISSSEN, ESQ. (TELEPHONICALLY)

14

15 KING STREET CAPITAL MANAGEMENT LLC

16 BY: MITCHELL C. SOCKET, ESQ. (TELEPHONICALLY)

17

18 GSO CAPITAL PARTNERS

19 BY: ANTHONY BORRECA (TELEPHONICALLY)

20

21 FARALLON CAPITAL MANAGEMENT

22 BY: ANATOLY BUSHLER (TELEPHONICALLY)

23

24 WATERSTONE CAPITAL MANAGEMENT LLP

25 BY: DAVID DUBACK (TELEPHONICALLY)

1

2 CANYON PARTNERS

3 BY: RAJ IYER (TELEPHONICALLY)

4

5 ANGELO GORDON & CO. LP

6 BY: DANIELLE LEONE (TELEPHONICALLY)

7

8 UBS SECURITIES LLC

9 BY: DENNIS J. RUGGERE (TELEPHONICALLY)

10

11 CITIGROUP

12 For CitiGroup Global Markets

13 BY: BILL J. SCHWARTZ (TELEPHONICALLY)

14

15 GRANTHAM MAYO VAN OTTERLOO & CO.

16 BY: WEI WANG (TELEPHONICALLY)

17

18 VARDE PARTNERS, CREDITOR

19 BY: SCOTT HARTMAN (TELEPHONICALLY)

20

21 TIMOTHY B. WILKINSON

22 Claimant Pro Se (TELEPHONICALLY)

23

24 MICHAEL BURROW

25 Claimant Pro Se (TELEPHONICALLY)

1 P R O C E E D I N G S

2 THE COURT: Be seated. Good morning.

3 MR. BERNSTEIN: Good morning, Your Honor. Mark  
4 Bernstein from Weil, Gotshal, Manges on behalf of Lehman  
5 Brothers Holdings Inc. and its affiliated Chapter 11 debtors.

6 We have two reserved motion on the agenda this morning  
7 and then three contested claims matters. The first reserved  
8 motion is the motion of the debtors to estimate the amount of  
9 claims filed by indenture trustees related to residential  
10 mortgage-backed securities. As Mr. Perez reported at the prior  
11 hearing, the debtors and the indenture trustees have met and  
12 have discussed and have agreed on a reserve for these  
13 particular claims of five billion dollars, in the aggregate,  
14 for the claims of U.S. Bank, Wilmington Trust, Deutsche Bank  
15 and Wells Fargo.

16 Separately, the debtors have agreed on reserves for  
17 Bank of America and HSBC. And those are not included in this  
18 order; the five billion just really for those first four  
19 trustees.

20 Yesterday, the debtors filed a revised form of order  
21 which indicates the five-billion dollar reserve number and  
22 allocates it ninety-five percent for the claims against LBHI  
23 and five percent for the claims against SASCo. In addition,  
24 the debtors have agreed with the indenture trustees to seek to  
25 mediate the amounts -- the allowed amounts of the claims to

1 finally resolve the matter altogether. And that -- there's a  
2 paragraph in the order directing the parties to mediate at --  
3 with a mediator, either selected by the parties if they can  
4 agree or selected by the Court.

5 I'm happy to answer any questions Your Honor might  
6 have on this. Otherwise, this is going forward on an  
7 uncontested basis and we respectfully request Your Honor grant  
8 the motion estimating the reserve at five billion.

9 THE COURT: The motion's granted.

10 MR. BERNSTEIN: Thank you, Your Honor.

11 The next item on the agenda will be handled by my  
12 colleague, Mr. Fail.

13 MR. FAIL: Good morning, Your Honor. Garrett Fail;  
14 Weil, Gotshal for the debtors.

15 The next motion is the motion of Lehman Brothers  
16 Holdings Inc. for authority to use non-cash assets in lieu of  
17 available cash as reserved for disputed claims. Of the  
18 approximately 11,900 holders of disputed claims that were  
19 served with the motion, only five filed responses. I'm happy  
20 to report, Your Honor, that four of the five objections have  
21 been resolved. The debtors have been informed that Mr. Coreth,  
22 Golden State Tobacco Securitization Corporation, Commerce Bank  
23 and U.S. Bank are no longer prosecuting their objections.

24 The debtors were not able to reach a resolution of the  
25 fifth objection which was filed by Mr. Jamie Murcia who holds a

1 1.4 million dollar disputed claim. LBHI has agreed to adjourn  
2 the hearing with respect to Murcia's -- Mr. Murcia's claim only  
3 to the March omnibus hearing. The debtors are hopeful that  
4 they will be able to reach a resolution of this objection prior  
5 to that date to obviate the need for a contested hearing. As a  
6 result, the motion is going forward uncontested this morning.

7 The approach of this motion was expressly contemplated  
8 by Section 8.4 of the Chapter 11 plan confirmed in December.

9 THE COURT: Let me break in and ask you a question  
10 that may be obvious to everybody, but it's not obvious to me.  
11 How does it work for Mr. Murcia's opposition to be reserved to  
12 another hearing when I'm being asked to approve a procedure  
13 that applies across the board? Is it the position that this is  
14 specific to Mr. Murcia and that, at least in respect of his  
15 claim as a disputed claim, that his claim, pending resolution,  
16 will still be treated as reserved by cash assets?

17 MR. FAIL: The debtors will reserve 100 percent of the  
18 pro rata share of distributions in cash for Mr. Murcia's 1.4  
19 mill -- approximate 1.4 million-dollar claim, pending another  
20 agreement on a reserve, disallowance of the claim or order of  
21 the Court with respect to an ability to substitute non-cash  
22 assets for that claim.

23 THE COURT: So the curiosity, it seems, is that  
24 because he has a relatively small claim, he ends up, by virtue  
25 of not resolving his objection, with cash reserves while

Page 30

1 everybody else in the case gets non-cash reserves. That seems  
2 bi -- that seems strange to me.

3 MR. FAIL: A higher percentage of cash reserves.

4 There will be a twenty-five percent -- a minimum of twenty-five  
5 percent reserved on an aggregate basis for all of the claimants  
6 and that aggregate is pooled. And it's higher at different  
7 subsidiary debtors that -- as set forth in the Cohn  
8 declaration, Your Honor. So that money is pooled.

9 So to the extent that other claims that are currently  
10 disputed become subsequently allowed after the first  
11 distribution date and before the second, cash will be available  
12 for those claimants as it would for Mr. Murcia. In the  
13 interim, though, to avoid a contested fight over what is in  
14 this case a relatively small claim, in the unique circumstances  
15 of these cases, we thought it best to proceed on a consensual  
16 basis.

17 THE COURT: Okay. I mean, I was perfectly prepared to  
18 deal with everything on a contested basis today. So we can  
19 deal with it in a month.

20 MR. FAIL: Okay. Thank you, Your Honor.

21 The debtors believe that using a partial non-cash  
22 reserve for disputed claims is a preferred means to accelerate  
23 distributions to the thousands of holders of allowed claims.  
24 If the motion is approved, the six participating debtors  
25 estimate that they will be able to distribute approximately 2.8

1 billion dollars more than they would otherwise to holders of  
2 allowed claims in the initial distribution alone.

3 As described in the motion, the relief requested also  
4 benefits holders of currently disputed claims that subsequently  
5 become allowed because they will benefit -- because they will  
6 be entitled to receive a catch-up distribution at the higher  
7 percentage paid on the initial distribution. The procedures  
8 established provide adequate, reasonable protection for the  
9 holders of disputed claims. In order to substitute non-cash  
10 assets, two conditions must be satisfied on a distribution  
11 date: The applicable debtor must reserve at least twenty-five  
12 percent of the required reserve amount in cash so there will be  
13 a minimum cash reserve; and the value of the participating  
14 debtor's non-cash assets must be at least 2.5 times that amount  
15 of the debtor's required reserve not covered by the minimum  
16 cash reserve.

17 Non-cash assets will be used first to pay catch-up  
18 distributions to holders of disputed claims that become  
19 allowed. And then, to replenish the fund -- replenish and fund  
20 the minimum cash reserve before further distributions are made  
21 to holders of previously allowed claims. The motion does not  
22 apply to administrative, priority or secured claims. All  
23 disputed claim holders will be entitled to receive the interest  
24 earned on their reserve amount as if the entire amount has been  
25 reserved in cash. So there is no change with respect to the

1 interest provision in the plan.

2                   Additionally, the plan administrator will evaluate  
3 the -- each debtor's assets and claims prior to each  
4 distribution date and the plan administrator may establish  
5 additional minimum conditions prior to substituting non-cash  
6 assets as reserves. The relief requested is supported by the  
7 Cohn declaration. Mr. Cohn is a managing director with Alvarez  
8 & Marsal and a senior vice-president and co-treasurer of Lehman  
9 Brothers Holdings Inc.

10                  The declaration illustrates the mechanics of the  
11 motion, assuming values as of January 27th, 2012, and it  
12 provides further support for the protections that are  
13 established by the motions for disputed claim holders. For  
14 instance, in the illustrative example set forth on Exhibit D,  
15 the asset-to-reserve ratio for LBHI is in excess of 20:1. And  
16 for LCPI, it's 190:1.

17                  The other participating debtors will retain a minimum  
18 asset-to-reserve ratio of 2.5:1 but a minimum cash reserve  
19 significantly greater than twenty-five percent; fifty percent  
20 for LBSF, seventy percent for LOTC and ninety percent for LBCS.  
21 Mr. Cohen is present in the courtroom today and I would move  
22 for the admission of his declaration into evidence.

23                  THE COURT: Is there any objection to that?

24                  I hear no objection. It's admitted.

25                  (Steven Cohn's declaration was hereby received into evidence as

1 a Debtors' Exhibit, as of this date.)

2 MR. FAIL: Thank you, Your Honor.

3 The motion is also supported by the creditors'  
4 committee which filed a statement in support at Docket 25546.

5 On February 20th, we filed a revised proposed order. The order  
6 contained clean-up and technical changes, mainly relating to  
7 amounts other than plan adjustment that are reallocated  
8 pursuant to settlements incorporated into the plan. The  
9 changes make clear that any reallocated amounts for the LCPI  
10 settlement amount, the LBSF settlement amount and the LBSF  
11 additional settlement amount that would be reserved for  
12 disputed claims in the classes that are allowed to receive a  
13 share of those plan settlement reallocations will continue to  
14 be reserved in cash.

15 In addition, to resolve one of the objections to the  
16 motion, LBHI agreed that it would provide notice of its  
17 intention to substitute non-cash assets in compliance with the  
18 requirements of the motion and the proposed order in advance of  
19 any distribution made, subsequent to the initial distribution.  
20 Under the unique circumstances of these cases, the debtors  
21 respectfully request that the Court grant the relief requested.

22 THE COURT: We're proceeding on an unopposed basis, so  
23 this becomes easy to do. But I would like to hear from counsel  
24 for the creditors' committee in reference to the statement that  
25 was filed, which is have read, because we're dealing with a

1 fairly significant adjustment in the treatment of disputed  
2 claims, fully consistent with Section 8.4 of the plan, but with  
3 specifics that were not built into the plan. And so, I'm  
4 particularly interested in hearing what the creditors'  
5 committee has to say about its independent review of this  
6 process.

7 MR. FAIL: Thank you, Your Honor.

8 MR. FLECK: Good morning, Your Honor. Evan Fleck of  
9 Milbank, Tweed -- shouldn't have done that -- on behalf of the  
10 official committee.

11 As Mr. Fail noted, and as Your Honor noted, we do  
12 support -- the committee supports the relief requested in the  
13 motion and we filed a statement on the docket. When the plan  
14 provision was initially contemplated, the committee was  
15 supportive of it. At that time, it was really just a concept  
16 that maybe at some time in the future, it will make sense to  
17 use some of the non-cash assets of the estates and they're  
18 significant, to provide for protection and reserve when  
19 distributions ultimately -- when we reach that phase of the  
20 case. And it wasn't until after the plan discussions really  
21 took place in earnest and the confirmation process that we  
22 thought, together with the debtors, about potentially invoking  
23 that provision and coming up with the mechanism that's the  
24 subject of the motion.

25 And as with many other motions, we've come up before

1 the Court and told Your Honor that we took a lot of time and we  
2 weren't initially, as a committee, convinced that this was the  
3 right way to proceed. And together with the committee's  
4 financial advisors, we spent a great deal of time working with  
5 A&M to crunch the numbers and make sure that not only were the  
6 and are the allowed claimants protected by the relief requested  
7 in the motion, but also those parties who had disputed claims  
8 because the committee recognizes that those parties, some of  
9 them will ultimately have allowed claims; they are part of the  
10 creditors' committee's constituency and the committee owes  
11 fiduciary duties to those parties as well.

12 And after taking those analyses into account,  
13 ultimately the committee did decide this relief does make sense  
14 and protects the interests of all parties. And, as Your Honor  
15 noted, it was contemplated by the plan and ultimately with  
16 the -- in connection with the motion, parties were given  
17 adequate notice of the relief that was requested.

18 The committee, often, through counsel and financial  
19 advisors, we received inquiries from parties in interest in the  
20 cases and often their views about relief requested. In the  
21 case of this motion, there were questions raised by creditors  
22 but the overwhelming majority of the inquiries that the  
23 committee received and that its advisors received was positive.  
24 People wanted to know the mechanism by which the catch-up  
25 distributions and subsequent distributions would be made and

1 how'd they be protected, but after they understood the process,  
2 there was overwhelming support.

3 The committee -- there are two primary reasons why the  
4 committee is supportive of the relief, Your Honor. First, it's  
5 because of the substantial benefits that go to allowed --  
6 holders of allowed claims. I think that's manifest from the  
7 motion; distributions are going to be larger. And as I argued  
8 to the Court in connection with the LBF motion a few weeks ago,  
9 it's important to the committee that part of the bargain that  
10 we think was at issue in this plan settlements that so many  
11 creditors in these cases made and the compromises they reached  
12 in connection with resolving their claims and not pursuing  
13 litigation in these case was that the initial distribution, and  
14 all distributions, would be meaningful. And they would be the  
15 largest distributions that were appropriate under the plan.  
16 And those creditors were aware that this provision was in the  
17 plan, believed it was appropriate and in the committee's view,  
18 it was their rational expectation that some of the non-cash  
19 assets of these estates would be used for reserve purposes so  
20 that the initial distribution could be as large as possible and  
21 as appropriate under the circumstances, while still taking into  
22 account and protecting the interests of the disputed claim  
23 holders.

24 In consultation with counsel and its financial  
25 advisors, the committee concluded that the risk to the holders

1 of disputed claims in this process is remote. So many things  
2 in this case, we've said there's no such thing as a riskless  
3 transaction; we think that's true here as well. But the risks  
4 that exist here are reasonable and appropriate under the  
5 circumstances. It's set forth more fully in the declaration of  
6 Steven Cohn in support of the motion, but the committee  
7 believes that LBHI has proposed reasonable measures to protect  
8 the interest of the disputed claim holders. In the committee's  
9 opinion, it will ensure that any potential prejudice to those  
10 holders, as I said, is remote.

11           Although LBHI can come back to the Court and propose  
12 additional minimum conditions, with respect to the minimum  
13 asset-to-reserve ratio, there will -- they would be required to  
14 provide due notice to the holders of disputed claims and this  
15 Court's approval would be required if LBHI ever seeks to reduce  
16 the minimum terms and conditions that are proposed in the  
17 motion. That was a very important component of the process for  
18 the committee.

19           Additionally, Your Honor, under the priority scheme  
20 for subsequent distributions, the available cash that's  
21 generated from non-cash assets will be used first to satisfy  
22 the catch-up distributions and then to fund the minimum cash  
23 reserve for the outstanding disputed claims. And in the  
24 committee's view, they're comfortable that that will endure  
25 that the holders of disputed claims that subsequently become

1 allowed claims will receive the pro rata share of distributions  
2 to which they're entitled. Significantly, the holders of  
3 disputed claims will be -- will continue to be entitled to the  
4 accrual of interest that would have been earned on the entire  
5 amount of the reserves as if they consisted entirely in cash.

6 And more important to the committee's determination  
7 that the request is reasonable under the circumstances, the  
8 committee's advisors have analyzed all the variables that will  
9 impact the sufficiency of available cash to cover the disputed  
10 claim that subsequently become allowed and to fund the minimum  
11 cash reserve, and have concluded that there is no risk of  
12 insufficient available cash to satisfy catch-up distributions.

13 As we've set forth in the committee's statement, the  
14 committee's advisors together with the debtors' advisors have  
15 analyzed the outstanding disputed claims; the debtors'  
16 projections of the amounts in which such claims may be allowed  
17 as well as the committee's own projections; the value of the  
18 participating debtors' non-cash assets; the estimated cost of  
19 the post-effective date administration of the participating  
20 debtors' estate; and the near-term cash events that are  
21 expected to generate non-cash assets. And based upon those  
22 analyses, the committee has concluded that a significant  
23 cushion will exist for the protection of holders of disputed  
24 claims, thereby making the risks that are attendant to the  
25 motion remote and appropriate under the circumstances.

1                   And for those reasons, Your Honor, the committee is  
2                   supportive of the relief requested and asks that the order be  
3                   entered.

4                   THE COURT: I appreciate your comments and they're  
5                   very helpful. But I, without quibbling, want to ask you about  
6                   your reference to there being no risk to the inability of the  
7                   debtor to make catch-up distributions versus what I think was  
8                   your opening salvo that it's virtually impossible for  
9                   transactions to made riskless.

10                  Is this a remote risk or is there, in the opinion of  
11                  the committee's professionals, no risk that this set-up will  
12                  result in a shortfall for any of the disputed creditors in the  
13                  future?

14                  MR. FLECK: Your Honor, we believe that there's a very  
15                  remote risk. I guess that's option number 3, because, as I  
16                  said, we think that -- we're very comfortable with the  
17                  committee's analyses with respect to the value of the non-cash  
18                  assets. We've tested the debtors' determination and analyses  
19                  with respect to the valuation of those assets. We think  
20                  they're good and they can be relied upon, and they've been  
21                  relied upon throughout these cases.

22                  We can't predict every circumstance that comes up  
23                  along the way, so therefore --

24                  THE COURT: Your partner seems anxious to say a few  
25                  words. And I'm going to let him do that.

1 MR. FLECK: Okay.

2 UNIDENTIFIED SPEAKER: Your Honor, I picked up on how  
3 you precisely phrased this in terms of whether there's a remote  
4 risk or no risk with respect to a potential shortfall or the  
5 inability to make distributions to creditors in the future.  
6 And I'm going to answer it two ways.

7 We believe there is no risk that a creditor will bear  
8 a permanent risk of non-payment as a result of this. There is  
9 a remote risk that -- and we believe it's a very small risk --  
10 that a subsequent distribution date -- there may be  
11 insufficient cash assets to true up everybody whose claims have  
12 been allowed in the interim, and therefore they would have to  
13 wait to the next one when those non-cash assets were  
14 liquidated. But we believe that is extremely remote. We ran  
15 numerous hypotheticals on that and in the, you know, ninety-  
16 five-plus percent of cases, there wasn't even the delay of  
17 payment.

18 THE COURT: Okay. Appreciate that.

19 UNIDENTIFIED SPEAKER: Thanks.

20 THE COURT: I also recognize that my question was  
21 deliberately designed to get at what risks we're talking about.  
22 And I'm satisfied that the difficult question has been  
23 answered -- by both of you.

24 I do have a question, though, for Mr. Fail, and  
25 perhaps also for Mr. Cohn. And it has to do with the

1 resolution of all objections with the exception of Mr. -- or  
2 maybe it's Ms. Murcia's objection which continues. I'd like to  
3 know more about the process that led these various objectors  
4 to, in effect, give up and whether or not any concessions were  
5 made to them in order to get them to withdraw their objections  
6 at this point.

7 MR. FAIL: Your Honor, Garrett Fail, again.

8 With respect to U.S. Bank and to the extent that any  
9 of the parties are present or on the telephone and wish to add,  
10 supplement or correct, you know, they should feel free -- with  
11 respect to U.S. Bank, our conversations were productive  
12 immediately following the filing of the Cohn declaration which  
13 was filed after the objection deadline. So, after parties, I  
14 think, after all of the parties had a chance to review the Cohn  
15 declaration and we had a chance to explain it and discuss it  
16 with them and the committee's statement in support was filed,  
17 circulated to them and discussed, I think that's one area that  
18 went a very long -- two things that went a long way to resolve  
19 the objections.

20 With respect to U.S. Bank, Your Honor, I don't know if  
21 I names them originally, but that was -- to resolve that  
22 objection, we agreed to -- the debtors agreed to provide  
23 advance notice of subsequent applications of the relief  
24 required in the motion. That is the only thing. In connection  
25 with none of these resolutions were any claim settlements

1       reached; no claims allowed; no compromise on the debtors' or  
2       any parties in interest's ability to object to these claims  
3       which are -- may be disputed.

4               With respect to the remaining three claims, if my math  
5       is correct, the debtors entered into reserve stipulations which  
6       provided for a minimum cash reserve percentage higher than  
7       twenty-five percent, but a floor that would be maintained for  
8       each of the claims. Which, again, in the context of these  
9       cases, were each relatively small and in the aggregate,  
10       compared to the amount of and the number of and the size of the  
11       aggregate pool of disputed claims and the cash that would be  
12       required to be reserved, are relatively minimal; it wouldn't  
13       have an effect on the -- significant effect on the distribution  
14       to creditors.

15               THE COURT: Okay. Is there anyone else who wishes to  
16       say anything in reference to this inquiry?

17               MR. TOP: Your Honor, Frank Top on behalf of U.S.  
18       Bank. We did withdraw our objection based upon the statements  
19       that the debtors are going to be providing, particularly as  
20       part of future distributions. We were not as concerned about  
21       this upcoming distribution, particularly since we're primarily  
22       an LBHI creditor and the ratios currently are so large. But we  
23       are, of course, you know, concerned about future distributions  
24       and we felt that the -- at least the statement that, you know,  
25       the debtors -- that someone's actually looking at these ratios

1 and that these ratios are being complied with in connection  
2 with future distributions will be helpful, not only to U.S.  
3 Bank, but to all creditors of the estates, so that they can  
4 take a look at that and review that in advance of a  
5 distribution and take whatever action they view as appropriate  
6 at that particular point in time.

7 We also took some comfort with the fact that the plan  
8 administrator doesn't have to use these particular ratios; it  
9 could be more conservative if the plan administrator so  
10 chooses. And so we would hope that, you know, to the extent  
11 that market conditions got to the point where, lo and behold,  
12 there might be another Lehman event or something like that  
13 that's so drastic that the plan administrator would use his  
14 discretion appropriately, that -- be a little bit more  
15 conservative if that -- those types of events ever occurred.

16 So, no, we don't think that there's no risk, but we  
17 think so long as people are provided with information in  
18 advance of future distributions to allow them to protect  
19 themselves, to a certain extent, and that the plan  
20 administrator uses his discretion appropriately, that we got  
21 comfortable enough with the motion to withdraw our objection.

22 Thanks.

23 THE COURT: Okay. I have a question for Mr. Cohn, if  
24 he's present. It's a very, very -- Mr. Cohn, you can hear the  
25 question and then you can stand up and answer. There's no need

1 to be sworn at this point.

2 It's really -- I guess it's my own inability to fully  
3 appreciate the financial models that are embedded in the  
4 conclusions set forth in your declaration and in the proposal.  
5 I'd like to know a little bit more about how the ratio of 2.5:1  
6 was developed.

7 I assume that there was a sensitivity analysis of some  
8 sort done and that different ratios may have been tested as  
9 part of the process in coming up with the 2.5. But, obviously,  
10 the 2.5 bears no relationship to the 190:1 ratio that appears  
11 at LBHI. And in part because this structure is so complicated,  
12 at least from my perspective, and must have evolved over time  
13 with a balancing between maximizing present distributions to  
14 allowed claimants and protecting the interests of future  
15 claimants that are subject to dispute, I'm just interested in  
16 knowing how this process went and how you ended up in the place  
17 that has been proposed.

18 MR. COHN: Sure. We actually --

19 THE COURT: You can come to the microphone.

20 MR. COHN: My name is Steven Cohn.

21 We actually looked at a couple of different options.  
22 We looked at roughly 2-and-a-half to 1 and 3:1 and the concept  
23 that we used in determining that or looking at this was almost  
24 an asset-based lending concept. In other words, if we -- if  
25 the estate were to go out and borrow money based on the assets,

1 what kind of advance rate would a bank provide to us in terms  
2 of the asset? Similar to an asset-based loan that uses  
3 accounts receivable or inventory as security, you might get  
4 eighty percent of the accounts receivable or you might get  
5 sixty percent of inventory. These being a combination of  
6 assets that are liquid that actually throw off cash, as in  
7 loans, whether they be real estate loans or commercial loans,  
8 and assets that don't throw off money such as private equity  
9 investments or, you know, other things that we need to wait for  
10 to monetize. So, a combination of things and we thought we  
11 needed to be a little bit more conservative than what a bank  
12 would actually do on liquid inventory and receivables because  
13 that's an on-going business. So we wanted something somewhat  
14 more conservative than that.

15 We looked and two and a half; we looked at three. We  
16 thought that two and a half was a reasonable floor in terms of  
17 protection. As you've noticed from the exhibit, it only  
18 applies to the three smaller entities at this point in time.  
19 And we would expect that, over time as their assets decline,  
20 their actual reserves of cash will increase. I think at the  
21 moment, it's about fifty percent for LBSF. We would think,  
22 actually, by the time of the distribution, it'll actually be a  
23 higher percentage cash reserve because their assets continue to  
24 come down as cash is collected. So the two-and-a-half-times  
25 number which will be the trigger will actually generate a much

1 higher -- not much, but maybe ten-point higher cash reserve at  
2 this point, but the time we get to a distribution.

3 So that was really the thought process. We thought  
4 twenty-five percent on the other side, as a cash reserve, was  
5 really kind of the absolute minimum. In other words, we are  
6 conscious of our obligations to disputed claimants as well as  
7 allowed claimants and that, really, using something less than  
8 twenty-five percent was not prudent. And we reserved the  
9 rights, at least as my understanding goes, that if as the  
10 assets decline in the estate or we're not happy with the  
11 quality of the assets, to say you know what, our minimum  
12 threshold will be thirty-five percent on the second or third or  
13 fourth distribution in order to make sure that there is  
14 sufficient assets available to pay the disputed claimants as  
15 they become allowed.

16 THE COURT: And I take it that in this process, you  
17 had some interaction with the professionals for the committee  
18 and shared your work product or at least thinking with them and  
19 that they tested it as well?

20 MR. COHN: Yes. We spent a considerable amount of  
21 time with FTI who are the financial advisors on this piece of  
22 the business with -- of the committee. They took us through  
23 their analysis; they asked us to do a little bit more. We had  
24 done some work -- the only thing that's not included were our  
25 estimates of cash flow on a go-forward basis, which is really

1 what the committee's advisors wanted to understand. In other  
2 words, how much cash would be generated between now and the  
3 next distribution date and they made their own estimates and we  
4 shared with them whether we thought they were in the ballpark  
5 or not. They were using conservative numbers and they were --  
6 and they actually shared with us a preliminary form of the  
7 exhibits that they shared with the committee. So, yes, we had  
8 the opportunity both to work with them and to give them some  
9 constructive criticism as to how their presentation should go.

10 THE COURT: Okay. Thank you very much for that.

11 Anything more?

12 MR. FAIL: No, Your Honor.

13 THE COURT: Okay. This is approved. I'm satisfied  
14 based upon the materials that I've reviewed and the statements  
15 that have been made on the record, including the comments of  
16 counsel, both counsel for the committee who happen to be  
17 present today and Mr. Cohn's statements in response to my  
18 questions, that the structure that's been set up here provides  
19 what I'll term adequate protection for the disputed claims.  
20 And I believe that the process that has been described  
21 represents a creative and appropriate balancing of the needs of  
22 creditors whose claims have been allowed with those creditors  
23 that have claims that are subject to dispute.

24 Candidly, I'm surprised that there is a remaining  
25 objection that is being carried and, to the extent that this is

1 being heard as a separate matter in March, I'm frankly loathe  
2 to disparately protect one creditor that happens to be  
3 unwilling to make concessions in the objections that had been  
4 lodged. Notwithstanding the very persuasive evidence that has  
5 been presented concerning adequate protection, such opposition  
6 should not result in more favorable treatment.

7 I'm in effect telegraphing what I would do with that  
8 objection if it were being heard today. To the extent the  
9 parties wish to be guided by that, that may be helpful.

10 It's approved and I'll enter the order.

11 MR. FAIL: Thank you very much, Your Honor. I'll turn  
12 the podium over to my colleagues who will continue with the  
13 rest of the claims agenda.

14 THE COURT: Okay.

15 MR. KLEINSASSER: Your Honor, Matthias Kleinsasser  
16 with Weil, Gotshal for the debtors. I'm going to handling  
17 agenda item 3.

18 Your Honor, this item concerns the 221st omnibus  
19 objection. That objection seeks to expunge claims of  
20 individual noteholders, each of which is covered by a proof of  
21 claim filed by an indenture trustee.

22 Today, Your Honor, we're moving against claim 67675,  
23 which is held by Ms. Annetta Pugia. That claim which, Your  
24 Honor, I'm going to call the new claim, is virtually identical  
25 to claim 35260 which Ms. Pugia filed on September 28th, 2009.

1 Your Honor, I'm going to refer to the claim 35260 as the  
2 original claim.

3 The debtors previously identified the original claim  
4 as duplicative of the indenture trustee claim 21805 filed by  
5 Bank of New York Mellon and included the original claim on the  
6 twenty-seventh omnibus objection. The Court overruled Ms.  
7 Pugia's objection to the twenty-seventh omnibus objection and  
8 the original claim was expunged pursuant to an order of this  
9 Court entered on September 21st, 2010.

10 Ms. Pugia subsequently filed the new claim, Your  
11 Honor, on October 3rd, 2011. The new claim is subject to the  
12 221st omnibus objection and the new claim is the one we're  
13 moving against now. The new claim is essentially the same  
14 claim as the original claim, Your Honor, and actually purports  
15 to amend the original claim. The asserted amount is almost  
16 exactly the same, approximately 23,000 dollars, and it's based  
17 on the same security as the original claim.

18 The debtors have identified the new claim as  
19 duplicative of indenture trustee claim, 21805, the same  
20 indenture trustee claim that covered the original claim.  
21 Specifically, Your Honor, the security on which the new claim  
22 is based has a QCIP of 52519Y209, which is covered by the  
23 indenture trustee claim.

24 Ms. Pugia filed two responses to the 221st omnibus  
25 objection; one on October 24th, 2011 at docket number 21560,

1 and an identical response on February 8th, 2012 at docket  
2 number 25111. These responses do not address the merits of the  
3 221st omnibus objection. The bases of these responses is that  
4 Ms. Pugia invested money with the debtors who shortly  
5 thereafter were found to be financially unsound.

6 The responses request that the Court overrule the  
7 objection because the investment made by Ms. Pugia represent a  
8 lot of money to her. Without meaning any disrespect to Ms.  
9 Pugia, Your Honor, who I understand to be appearing pro se in  
10 this case, the debtors would point out that she has not  
11 addressed the merits of the 221st omnibus objection;  
12 specifically, that the new claim is duplicative of the  
13 indenture trustee claim.

14 Because the security serving as to the basis for the  
15 new claim is covered by the indenture trustee claim, we  
16 respectfully request that the Court overrule Ms. Pugia's  
17 responses and grant the 221st omnibus objection with respect to  
18 claim 67675.

19 THE COURT: Is Annetta Pugia in court or is she  
20 present by telephone?

21 I hear no response. I've reviewed the claimant's  
22 written submission and agree with the characterization of  
23 counsel that it does not deal with the merits of the objection  
24 under the circumstances. And given the fact that Ms. Pugia is  
25 not here to prosecute her response, I'm overruling her

1 objection and granting the omnibus objection to claim with  
2 respect to her claim.

3 MR. KLEINSASSER: Thank you, Your Honor. I'm now  
4 going to turn the podium over to my colleague, Ms. Eckols.

5 Thank you.

6 MR. FAIL: Your Honor, Garrett Fail again. Just one  
7 scheduling note. I think there's -- I know there's an item on  
8 the calendar today for a status conference in connection with a  
9 motion filed by the members of the creditors' committee for  
10 reimbursement. Mr. Gitlin is here, chair of the fee committee,  
11 and has a scheduling conflict.

12 So if, at a certain point it pleases the Court, we  
13 could adjourn briefly the claims hearing and have the status  
14 conference. Alternatively, if that doesn't work for the Court  
15 we'll just proceed with the claims agenda.

16 THE COURT: Well, I see Mr. Gitlin in the front row.  
17 Ordinarily I don't change the order of business to accommodate  
18 the needs of one individual, unless there's an extraordinary  
19 need for that individual to be present. And in Mr. Gitlin's  
20 case, that's true; he does need to be present for the  
21 conference. If I had been advised of this prior to the  
22 commencement of today's hearing, we might have taken the status  
23 conference first and avoided the interruption of the calendar.

24 When -- not that his personal business should become  
25 public knowledge, but when does Mr. Gitlin need to leave the

1 courtroom?

2 MR. GITLIN: Your Honor, if necessary, I could stay.

3 Unfortunately, I have made serious commitments today in another  
4 town. If I could leave the courtroom about a quarter to 12 or  
5 12, I could still make it.

6 THE COURT: Oh, that won't be a problem.

7 MR. FAIL: Thank you, Your Honor.

8 MS. ECKOLS: Good morning, Your Honor. Erin Eckols  
9 for the debtors. I'm going to be handling the last two  
10 contested claims items. Agenda item 4 is the motion of Jeremy  
11 Kramer for reconsideration of the reclassification as an equity  
12 interest.

13 I believe Mr. Kramer's counsel is in the courtroom and  
14 making his way up to the podium.

15 THE COURT: Okay.

16 MR. KAPLAN: Good morning, Your Honor. Eugene Kaplan  
17 for Jeremy Kramer.

18 This is a motion for reconsideration of Mr. Kramer's  
19 claim which was reclassified as an equity interest in default.  
20 Mr. Kramer --

21 THE COURT: He voluntarily defaulted. He knowingly  
22 didn't take a position. How can you possibly come back now?

23 MR. KAPLAN: Well, I think, first of all the fact  
24 that -- even if he voluntarily defaulted, that's not a basis  
25 to --

1 THE COURT: Yes, it is.

2 MR. KAPLAN: It's one basis.

3 THE COURT: He's a sophisticated claimant who,  
4 according to the papers, knew full well that he had an  
5 opportunity to object. Extended the time with the consent of  
6 the debtor and chose to take a dive.

7 MR. KAPLAN: He is a sophisticated investment  
8 professional. He's not a lawyer. He's not a bankruptcy  
9 lawyer.

10 THE COURT: He certainly is in a position to protect  
11 his interest. It's a large claim. He worked at Neuberger  
12 Berman. He, presumably, knows a lot about what goes on in  
13 bankruptcies or is in the position to learn about it.

14 He was in consultation directly with debtors' counsel  
15 and made an informed decision, at least informed well enough  
16 for his purposes to not take a position. He could have hired  
17 counsel, he chose not to.

18 MR. KAPLAN: He could have.

19 THE COURT: He's now hiring counsel too late.

20 MR. KAPLAN: He hired counsel after he had spoken with  
21 his --

22 THE COURT: He's hiring counsel after he observed that  
23 others similarly situated were able to improve their position  
24 by fighting.

25 MR. KAPLAN: But those others were members of the same

1 group with which he is affiliated at Neuberger Berman, with  
2 whom he consulted initially and who expressed no interest in  
3 joining with him.

4 THE COURT: So what?

5 MR. KAPLAN: And --

6 THE COURT: So what?

7 MR. KAPLAN: He did not --

8 THE COURT: He's an individual. He's in the position  
9 to take a fight if he chooses to.

10 MR. KAPLAN: He did not know enough --

11 THE COURT: He chose not to.

12 MR. KAPLAN: He did not know enough to --

13 THE COURT: He could have learned. He could have  
14 informed himself, he didn't.

15 MR. KAPLAN: He could have, that's true. But even  
16 if -- even that being so does not mean that his default cannot  
17 be vacated and put him back into the position of litigating his  
18 claim.

19 THE COURT: Well, he has a 60(b) obligation to bear,  
20 how does he do that?

21 MR. KAPLAN: Well, he has demonstrated that the claim  
22 has merit. He has demonstrated, I think quite clearly, that  
23 the debtors are not at all prejudiced by restoring his claim.  
24 And I think he has demonstrated, certainly, that he did not act  
25 in bad faith. That under 60(b) his -- it certainly wasn't a

1 conscious decision to default, it was a --

2 THE COURT: Oh, yes, it was.

3 MR. KAPLAN: I think it was a lackadaisical sort of  
4 choice.

5 THE COURT: But, wait. But, wait. We're not talking  
6 about somebody who was unconscious. We're talking about  
7 someone who made a knowing decision not to take issue with the  
8 omnibus objection that affected his right. He did that  
9 knowingly. He may not have done it with the advice of counsel,  
10 and, presumably, he didn't retain counsel because he didn't  
11 think it was worth spending the money to engage counsel to  
12 fight the fight.

13 MR. KAPLAN: No, I don't -- I think he sought out  
14 others in the Strauss Group to work with him and they, because  
15 they had not been named in this objection, for whatever reason  
16 the debtor chose not to name them and isolate Mr. Kramer, they  
17 decided that there was nothing that they had to deal with at  
18 that time. When they then were served with the next or the  
19 118th objection, they went out and got counsel and -- over the  
20 course of months they got counsel and proceeded to fight the  
21 objection. He did not have that opportunity.

22 As you will see, Judith Kenney who was not a member of  
23 the Strauss Group but who was at Neuberger, she filed pro se  
24 papers and then later joined the group that I represent with  
25 respect to the 118th objection and joined in. But putting Mr.

1 Kramer in with his fellows does no more than put him where Ms.  
2 Kenny is and the others are, which is giving them a chance to  
3 fight for their claims.

4 As I said, the tripartite test by the Second Circuit,  
5 under 60(b) is not a win or take all of each element. It's  
6 looking at the totality of the circumstances and here, given  
7 that there is some merit to the claim that is going forward,  
8 given that the debtor is put in no worse a position with  
9 respect to Mr. Kramer's claim then with respect to other claims  
10 of the same nature, the only question is the excusability (sic)  
11 of the default.

12 And while Mr. Kramer may not have been litigious at  
13 the time and may not have thought much of the claim enough to  
14 go out and retain counsel at that time. He has thought about  
15 it subsequently. He has retained counsel. He's put in a  
16 position with everybody else. It certainly wasn't this, sort  
17 of, conscious, deliberate, willful, nasty, sort of, default  
18 that Lehman attempts to characterize it as. He was a pro se  
19 who didn't really understand what he was doing and gave up his  
20 rights and now thinks better of it. And given where we are in  
21 this process, nobody's really hurt by allowing him to come back  
22 and argue his claim.

23 THE COURT: On the prejudice point, let me press you a  
24 little bit because the history of the claims objection docket  
25 in this case is one of people just like your client, Mr.

1 Kramer, who default -- knowingly default -- receive notice of  
2 an omnibus claims objection and who say nothing and do nothing,  
3 and these matters go forward on an uncontested basis and  
4 billions of dollars in claims have been disallowed as a result  
5 of that process.

6 If what you say becomes the law of the case, every  
7 single person who made the same kind of decision that Mr.  
8 Kramer made can come back into court and restart the process.  
9 That's prejudice, not only to the debtors but to me.

10 MR. KAPLAN: I think that Mr. Kramer presents a  
11 special case.

12 THE COURT: Why?

13 MR. KAPLAN: Because --

14 THE COURT: I think he actually presents a case that's  
15 less special. He is a pro se who is sophisticated. He's a pro  
16 se that sophisticated people go to for financial advice. He's  
17 the kind of person who has access to smart advisors. He could  
18 have obtained you earlier and made an economic decision.  
19 According to your statements and your pleadings, if he had a  
20 group, he would have hired counsel but he didn't want to do it  
21 on his own. That's his choice.

22 MR. KAPLAN: Going back to what Your Honor started  
23 with, which is the prejudice, I think that the instance of  
24 these Neuberger claimants that I represent present, as I said,  
25 a special case, because they are far different from the

1 ordinary Lehman employees who voluntarily joined the Lehman pay  
2 scheme. So I think that for that reason, the number of  
3 claimants who could reopen their claims were this to become law  
4 of the case, would be a very finite universe and would not  
5 reopen the floodgates as the debtor supposes.

6 THE COURT: I understand your argument, but I  
7 disagree. This is not limited to the Straus Group, what used  
8 to be Neuberger Berman. This is a process that has been  
9 ongoing for a very long time with great success, and I believe  
10 that you have a very difficult burden in overcoming the  
11 prejudice argument associated with your request for  
12 reconsideration. But I'll hear what the debtors have to say --  
13 probably not much more than I've already said.

14 MS. ECKOLS: Your Honor, I'm going to keep it  
15 incredibly brief. The debtors' position is set forth at length  
16 in its response at docket number 25377, and I believe most of  
17 the key points have already been discussed here.

18 Mr. Kramer's decision not to oppose the  
19 reclassification was deliberate and it was willful for purposes  
20 of Rule 60(b), and this is fatal to his request for  
21 reinstatement. The key enquiry in the Second Circuit -- it was  
22 whether Mr. Kramer made a conscious decision not to respond,  
23 and it is clear that his decision was conscious and knowing and  
24 intentional. It is not an issue on the Second Circuit. It's  
25 not a requirement of bad faith or good faith. That is

1 irrelevant for this. He admits he received notice. He admits  
2 he received an adjournment. He admits he consulted with co-  
3 workers and attorneys. He admits that he decided not to retain  
4 counsel and ultimately not to oppose the seventy-third omnibus  
5 objection.

6 As Your Honor noted, he attempts to paint himself as  
7 an unsophisticated pro se creditor, when in reality he is a  
8 sophisticated investment advisor that is in charge of managing  
9 billions of dollars in investments. He could have filed a  
10 response on his own. We have dozens, maybe hundreds, of pro se  
11 people in these cases who file their own documents. He didn't  
12 even need to retain an attorney in order to oppose the seventy-  
13 third omni. He made a deliberate decision and he should be  
14 held to that decision.

15 Briefly, Mr. Kramer has not met his burden of  
16 establishing a meritorious defense in lieu of his asserting his  
17 own defense to the seventy-third omni. He attempts to borrow a  
18 response filed by certain individuals, allegedly co-workers  
19 that are similarly situated to him, in opposing the 118th  
20 omnibus objection. To carry his burden to proffer a  
21 meritorious defense, Mr. Kramer must offer his own defense, not  
22 point to another's. He cannot bootstrap his claim onto the  
23 response of other claimants to another objection no more than  
24 the debtors could seek to expunge claims that are on one  
25 objection pursuant to another.

1                   And finally, Your Honor, as to the prejudice point,  
2 Mr. Kramer cannot carry his burden on this factor. As Your  
3 Honor noted, there are thousands of other claimants whose  
4 claims have been disallowed or reclassified because the  
5 claimants failed to oppose the debtors' objections. Granting  
6 this motion would encourage others to seek relief whose  
7 circumstances are no more sympathetic than Mr. Kramer's at  
8 significant cost to the debtors and to this Court.

9                   For those reasons, we respectfully request that the  
10 motion be denied.

11                  THE COURT: The motion is denied and the reasons, I  
12 think, are clear from the colloquy on the record. Mr. Kramer  
13 may be within a class of claimants that currently is contesting  
14 reclassification of compensation claims based upon so-called  
15 restricted stock units. The outcome of that litigation is at  
16 the moment completely unclear. But it's too late for Mr.  
17 Kramer to join that party. It has -- as members of its  
18 class -- individuals each of whom opposed reclassification.  
19 Many of those individuals did so by simply writing letters  
20 saying, I oppose reclassification. All it took to get a ticket  
21 of admission to that particular ongoing litigation was  
22 something that one could classify as a real objection. By  
23 electing not to object, Mr. Kramer has waived the right to get  
24 back in.

25                  And I find that there has been a failure to satisfy

1 the standards under 60(b), not only because of the knowing  
2 decision not to object, but because of the significant  
3 prejudice that would arise by reason of allowing parties who  
4 have knowingly chosen not to oppose reclassification or  
5 disallowance to get back in. Finality is important in  
6 bankruptcy. The motion is denied.

7 MS. ECKOLS: Your Honor, moving to agenda item number  
8 5, that is the motion of Caisse Des Depots Et Consignations to  
9 permit a late-filed claim against Lehman Brothers Special  
10 Finance. I am not sure if their counsel is here --

11 MR. HELLMAN: Yes.

12 MS. ECKOLS: You'll forgive me for butchering your  
13 client's name.

14 MR. HELLMAN: That's okay. I do the same.

15 Good morning, Your Honor, Jay Hellman,  
16 SilvermanAcampora. For ease of reference perhaps we can just  
17 call the client CDC.

18 Your Honor, with me is my colleague, Brett Silverman,  
19 and before the Court is CDC's motion for the allowance of a  
20 late-filed claim in a sum of not less than 3,077,434 dollars.

21 Judge, there are a couple of issues that are not in  
22 dispute with respect to the motion. The first is that there is  
23 an ISDA master agreement between the parties and LBHI is a  
24 guarantor on that agreement.

25 The question really is in this case what constitutes

1 sufficient notice of a bar date to a known creditor. And I say  
2 known creditor because CDC is listed on schedule G of the  
3 petition as having an unexpired executory contract.

4 THE COURT: Mr. Hellman, I've read the papers and I'm  
5 familiar with the issues, and I'd like you to deal with  
6 response of the debtor that points out that your client  
7 received actual notice at two addresses.

8 MR. HELLMAN: Sure.

9 THE COURT: You're dealing with a notice provision in  
10 an ISDA agreement in treating that as if it governs the  
11 obligations of the debtor to provide actual notice of the bar  
12 date. Well, I have a problem with that position and you need  
13 to know that now.

14 MR. HELLMAN: Okay. I understand, Judge. The issue  
15 though is that any notices with respect to the agreement have  
16 to be sent to a specific particular address in France.

17 THE COURT: So what?

18 MR. HELLMAN: The reason is --

19 THE COURT: So what? I mean, I'm frankly astounded; I  
20 read your papers and it's as if inefficiency in France should  
21 be elevated to a procedural due process right.

22 MR. HELLMAN: Well, it's inefficiency on the debtors'  
23 side as well, Judge. There's a contract that governs the  
24 relationship of the parties that specifically says notice needs  
25 to be sent to a very particular address. If that notice is not

1 sent to that very particular address, the chances are --  
2 because it's a quasi-governmental agency in France that spans  
3 many, many blocks -- they're not going to get that notice. And  
4 the cases that we cite in the reply specifically address issues  
5 where there is for example a national union and indemnity  
6 agreement that says notice has to be sent to a very particular  
7 address. And there's very good reasons for that and that's  
8 what we're expressing in the papers. Notice to the --

9 THE COURT: I understand that, but there is a  
10 fundamental problem with your position where notice appears to  
11 have been actually given at two other addresses, one in New  
12 York and one in Paris. And where the notice address in Paris,  
13 but for the back office reference, has led to the rejection of  
14 the receipt of mail that, if opened, could have ended up in the  
15 right place. I don't understand how you can take the position  
16 you're taking with a straight face.

17 MR. HELLMAN: With respect to the -- because the case  
18 law tells us that when there's a specific notice provision in a  
19 contract, we're entitled to notice at that particular address.  
20 And, yes, the reason why we had that provision in the agreement  
21 is for exactly this reason, because we would not get the  
22 notice. It would wind up getting rejected and we'd wind up in  
23 this very position, unfortunately.

24 THE COURT: What took so long to get here?

25 MR. HELLMAN: There --

1 THE COURT: This is now 2012.

2 MR. HELLMAN: Sure. They're primarily -- first of  
3 all, it's, as I said, Judge, it's a quasi-governmental agency.  
4 The wheels don't move very quickly, but when they do, we're  
5 talking about primarily French-speaking employees. With --

6 THE COURT: But they have an office on 57th Street.

7 Wouldn't that -- don't they?

8 MR. HELLMAN: But they don't. That office had no  
9 dealings with respect to this contract. But be that as it may,  
10 that office was -- the client that exists now, CDC, separated  
11 from that office in New York in 2007, so it ceased to exist as  
12 a CDC proper, if you will, here today, entity.

13 MR. HELLMAN: But notice to the New York address under  
14 the contract is not sufficient. Notice to some alternate  
15 address in France is not sufficient, specifically because we  
16 have this contract that says, if you going to notify us about  
17 anything dealing with the ISDA agreement including presumably  
18 the notice of the bar date because that's the basis of our  
19 claim, then notice has to be sent to a specific address to make  
20 sure that we get it. Otherwise, we're in this very position.

21 THE COURT: Now are you saying -- and this is actually  
22 a fairly interesting question -- that parties can contract  
23 around the notice provisions of the bankruptcy rules and that  
24 parties can by separate contract impose notice obligations that  
25 wouldn't otherwise exist as a matter of law on debtors?

1                   MR. HELLMAN: It appears to be that way, Judge. If  
2 you look at the reply that we submitted, there are cases in  
3 support of that proposition that the parties had a contract.  
4 So even though there are notice provisions under the Bankruptcy  
5 Code that may provide for certain due process rights, if the  
6 parties have a specific agreement, a specific contract, that  
7 says notice has to be sent to that address -- that very  
8 specific address -- that's a requirement. We have to have  
9 actual notice to a known creditor in that situation.

10                  THE COURT: But you actually did receive three copies  
11 of the bar date notice. One that was rejected by the mail  
12 office, or mailroom of that location, and two that  
13 presumptively were received, plus there was publication notice,  
14 plus your client terminated the contract promptly after the  
15 commencement of the Chapter 11 case, and then completely  
16 ignored the fact that there was a bankruptcy that was  
17 publicized all over the world including France?

18                  MR. HELLMAN: Let's take that in a couple of pieces.  
19 The first part is, yes, there were notices that were sent to  
20 other addresses that presumably were not returned. But we're  
21 talking about again a quasi-governmental agency in France that  
22 has 73,000 employees and receives thousands of pieces of mail  
23 per day. Hence the requirement in the contract that there's a  
24 very, very specific address that has to be complied with and  
25 that's where notice has to be sent, and that unfortunately is

1 the one that was returned.

2 With respect to the publication, the case law that we  
3 cite in the papers in both the motion and the reply say, if  
4 there's a known creditor and you know that address, publication  
5 is insufficient. And with respect to -- really, the bottom  
6 line is even though due process may have been satisfied, the  
7 point is, is that the contract had a very specific notice  
8 provision that they have to comply with and if they don't, then  
9 case law provides that we have the ability to file a late  
10 claim.

11 I understand from counsel that their position -- even  
12 if we get past this sort of tricky issue -- we still have the  
13 four-factor Pioneer tests to take a look at that would allow  
14 the late-filed claim. And I understand counsel's position  
15 would mostly be, as we saw from the last go-around, the  
16 prejudice to the debtor and to the Court for everybody else who  
17 may have to come here and want to file a late claim. I know  
18 the Court had a couple of decisions that were rendered in May  
19 of 2010, I think it was. But our situation again is different  
20 because we have a very specific contractual obligation on the  
21 part of the debtor to provide us with notice.

22 And irrespective of the early termination, that really  
23 dealt with -- if we look at the contract carefully -- it really  
24 deals with the termination of the transactions and not  
25 necessarily the contract. The contract provisions are still

1 operative. It's just there's no transactions any longer  
2 because of the bankruptcy filing.

3 THE COURT: Who within your client made the decision  
4 to terminate the ISDA agreement?

5 MR. HELLMAN: I'm sorry, Judge. Could you repeat?

6 THE COURT: Who within your client made the decision  
7 to terminate?

8 MR. HELLMAN: That I couldn't answer. It's a  
9 bureaucracy. It could have been anybody from -- I'm sure it  
10 was somebody from a position of authority but I couldn't say  
11 who.

12 THE COURT: Okay. So, in effect, you argue that  
13 because you represent an organization that appears to be  
14 inefficiently managed that it should get some kind of special  
15 break in this bankruptcy. Am I misunderstanding your argument?

16 MR. HELLMAN: Yeah, I don't know that that's  
17 necessarily the argument, Judge. I think that the point is  
18 and, yes, it's not effectively managed because of -- well, I  
19 can't say it's not effectively managed. What I can say is,  
20 again, it's a quasi-governmental agency with thousands of  
21 employees. And the point that we're making is not that it's  
22 not managed properly. The point we're making is because of the  
23 enormity of this agency, the contract had very, very specific  
24 mailing requirements for notice. And if those are not complied  
25 with, the mail's going to be rejected and come back and it's

1 going to put us in this very position.

2 THE COURT: Do you know what procedures exist within  
3 your client to deal with errant mail, because given the vast  
4 number of addresses in Paris and the significant volume of mail  
5 that comes, the problem that we're now identifying quite late  
6 must happen literally every day.

7 MR. HELLMAN: I can't -- I have no idea of how they  
8 handle errant mail. Presumably, as in this case, it's returned  
9 as undeliverable. Hence -- and they have every contract or  
10 every dealing they have, has specific notice requirements to  
11 make sure that it gets to the very right -- the correct  
12 address.

13 THE COURT: With respect to your argument, this seems  
14 to me to be undue reliance upon strict compliance by parties  
15 you have no control over with respect to a notice provision  
16 that may or may not be observed.

17 MR. HELLMAN: If I can make one other point, Judge,  
18 and my colleague reminds me: The debtor -- it's not that the  
19 debtor didn't know of the notice requirements of the address.  
20 Our reply contains other correspondence that was sent by the  
21 debtor to that very specific address after the bar date notices  
22 were sent. So the debtor is well aware that they have to send  
23 information to this particular address in order for us to  
24 receive it.

25 THE COURT: Presumably, information is sent to that

1 particular address so that somebody who knows something about  
2 this transaction can take action with respect to it?

3 MR. HELLMAN: Correct.

4 THE COURT: Do you know who that person is?

5 MR. HELLMAN: I do not.

6 THE COURT: Okay. Thank you.

7 MR. HELLMAN: Thank you, Your Honor.

8 MS. ECKOLS: Your Honor, the debtors' position as to  
9 CDC's motion is set forth at length in its response at docket  
10 number 19314. I'm not going to address -- repeat all those  
11 arguments, but I want to address a few specific points.

12 CDC's due process and excusable neglect arguments boil  
13 down to the same question: Can a sophisticated organization  
14 that engaged in complex derivatives transactions with the  
15 debtors assert that it did not receive actual notice of the bar  
16 date when notice was admittedly delivered to three different  
17 addresses. The answer has to be "no". The only alleged defect  
18 that CDC claims with debtors' service of the bar date notice is  
19 that the address that was listed in the debtors' schedules --  
20 the address that one of the three notices to CDC was sent to --  
21 did not include an attention to the specific department that  
22 was provided in the master agreement between the parties. It's  
23 not an issue of whether the street address was incorrect. The  
24 street address was correct, as CDC acknowledges.

25 CDC's entire argument is based on the premise that

1 because it is a large organization with many departments and  
2 offices, that it need not conduct any due diligence whatsoever  
3 regarding the mail it receives if the sender does not direct it  
4 to a specific department within CDC. The bottom line is that  
5 CDC's alleged lack of notice is the result of CDC's internal  
6 mail-handling guidelines and its decision not to open the  
7 envelope that contained the bar date notice.

8 As set forth in the affidavit accompanying the  
9 debtors' response, the debtor served CDC with the bar date  
10 notice at three different addresses, two in Paris and one in  
11 New York. Two of those bar date notices were sent to the  
12 addresses that were specified in a derivatives contract between  
13 CDC and LBSF, one in Paris and one in New York.

14 The address on the bar date notice that was sent to  
15 Paris was correct, but it didn't include the attention line  
16 that specified that it should be routed within CDC to the Back  
17 Office Monetaire.

18 The envelope did, however, contain the following  
19 legend: "Legal documentation enclosed. Please direct to  
20 attention of addressee, president or legal department." When  
21 CDC received this envelope, it did not route it to its legal  
22 department or even open it to try to determine what department  
23 it should go to. Instead, CDC stamped it "Return to Sender"  
24 without even looking at it. This was a decision that was  
25 entirely within CDC's control. Having refused to open its

1 mail, CDC cannot now claim that its refusal to accept the  
2 actual notice that the debtors' mailed to the correct street  
3 address, deprives it of due process or gives rise to an  
4 excusable neglect defense.

5 As to CDC's due process argument, CDC's argument  
6 conflates notice that complies with due process with notice  
7 that strictly complies with the ISDA. Due process does not  
8 require compliance with those contract provisions. There are  
9 two different standards. Due process as set forth in *Mullane*  
10 and its progeny requires that notice be reasonably calculated  
11 to apprise parties of the pendency of the action. To satisfy  
12 due process, notice does not need to be provided in the way  
13 that a creditor prefers or in a way that is specified in a  
14 contract. Taking the movant's argument to its logical  
15 conclusion, the debtors could have served a bar date notice on  
16 every single office of CDC, but CDC would not be deemed to have  
17 received actual notice unless at least one of those notices was  
18 addressed to the department listed in the master agreement.  
19 Serving CDC with the bar date notice at three separate  
20 addresses -- street addresses that CDC does not dispute were  
21 correct -- was reasonably calculated to provide CDC with notice  
22 and fully complies with the due process.

23 Your Honor, the *Drexel* decision discussed in the  
24 debtors' response is on point. I don't want to repeat that  
25 discussion except to note that the court in *Drexel* determined

1 that Barclays received actual notice even though no notice was  
2 served on its London office, which was allegedly the proper  
3 office for handling the notice. In that case, the court  
4 determined that notice that was served on Barclays' offices in  
5 Connecticut, New York, and Australia, was sufficient and that  
6 it was the responsibility of Barclays' employees to route the  
7 notice to the proper department within the Barclays  
8 organization. Here CDC is not even arguing that the bar date  
9 was not sent to the proper office. Rather, CDC admits that  
10 notice was delivered to the proper street address, but it  
11 claims that it had no obligation to open the envelope and  
12 determine which department should handle it or apparently to  
13 forward it to its legal department as directed on the envelope.  
14 This argument fails under Drexel and is contrary to Mullane.

15 And, briefly, the case that CDC relies on -- the  
16 National Union case -- specifically actually provided that the  
17 notice provided by the debtors, despite having not complied  
18 with the contractual provisions, did in fact comply with due  
19 process.

20 Moving to excusable neglect, it's based on the same  
21 facts as CDC's due process argument and falls far short of  
22 Pioneer's excusable neglect standard. As Your Honor is aware,  
23 the most important Pioneer factor in the Second Circuit is  
24 whether the reason for the delay and the extent to which it was  
25 within the reasonable control of the movant. Here, CDC argues

1 that the reason for its delay in its filing was entirely the  
2 fault of the debtors in not directing the notice to a special  
3 department or specific department within CDC. However, it was  
4 CDC's decision to not open the envelope containing the bar date  
5 notice, and it was CDC's decision not to direct the notice to  
6 the legal department as was directed on the envelope. It was  
7 CDC's decision to simply stamp the envelope "Return to Sender"  
8 without conducting any diligence.

9                   CDC is a sophisticated party that entered into complex  
10 derivative transactions with LBSF. It should be sophisticated  
11 enough to open its mail and direct it within its organization.  
12 And CDC's decision whether or not to do so is within its  
13 reasonable control under Pioneer.

14                   Lastly, as to prejudice, CDC makes the same argument  
15 that other claimants have brought before this Court in its  
16 claiming excusable neglect. Specifically, that it's only one  
17 claim, that this is a massive bankruptcy, and that in the grand  
18 scheme of things this claim will have a negligible impact on  
19 the debtors but a major one on CDC. As Your Honor has noted  
20 when dealing with other claimants seeking leniency on the bar  
21 date, the prejudice to the debtors cannot be traced to the  
22 filing of any one single claim but to the impact of permitting  
23 exceptions that risk opening the floodgates.

24                   Having failed to carry its burden on excusable neglect  
25 and because CDC received notice that complied with due process,

1 the motion should be denied.

2 THE COURT: I agree. The motion should be denied and  
3 that's based upon the present record. I'm going to deny the  
4 motion, however, without prejudice to further presentations  
5 that may be made by CDC concerning its internal processes.

6 One of the aspects about this that troubles me is that  
7 there is a general statement that CDC needed notice at a  
8 particular address in order to function. I have a hard time  
9 accepting that. I have absolutely no showing that has been  
10 made by the movant concerning what CDC is really all about in  
11 terms of the way it processes mail, who deals with it, who is  
12 responsible for this contract, what that individual did or  
13 didn't do in connection with monitoring the contract after  
14 termination, what if anything was done by that individual to  
15 pay attention to the bankruptcy, to consult with bankruptcy  
16 counsel or even think about it after terminating the contract.  
17 This appears to be a situation of complete and absolute neglect  
18 and inexcusable inefficiency.

19 For that reason, based upon the showing, there's  
20 absolutely no basis to grant the motion. That doesn't mean  
21 that it may not be possible at some time -- with great  
22 embarrassment, presumably, to the people involved -- to  
23 demonstrate why it is that years went by and they did nothing  
24 about a claim they now think is significant.

25 The motion is denied without prejudice to being re-

1 urged if as in when it may be possible to demonstrate good  
2 cause. I see no basis for good cause on the present record.

3 MS. ECKOLS: Thank you, Your Honor, and I believe that  
4 concludes today's contested claims agenda.

5 THE COURT: Okay. We're going to clear the courtroom  
6 except for those who are going to stay for the chambers  
7 conference. We could go into chambers but I think there are  
8 probably too many people involved.

9 So we'll take a five-minute break and then everybody  
10 who's involved in the chambers conference can come forward.  
11 I'll return in five minutes.

12 MS. ECKOLS: Thank you, Your Honor.

13 (Whereupon these proceedings were concluded at 11:16 AM)

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DEBTORS	DESCRIPTION	PAGE
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6

No number	Steven Cohn's declaration	32
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7

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RULINGS
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9

	Page	Line
Debtors' motion to estimate the reserve	28	9
at five billion granted		
Debtors' motion for authority to use non-cash assets in lieu of available cash granted	48	10
Ms. Pugia's objection overruled and omnibus objection to Ms. Pugia's claim granted	50	25
Motion of Jeremy R. Kramer denied	60	11
Caisse Des Depots Et Consignations' motion denied without prejudice to any further presentations concerning internal processes	74	3

10

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2 C E R T I F I C A T I O N

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4 I, Sara Davis, certify that the foregoing transcript is a true  
5 and accurate record of the proceedings.

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11

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ALSO TRANSCRIBED:

13

PNINA EILBERG

14

AAERT Certified Electronic Transcriber CET\*\*D 488

15

SHARON MYER

16

AAERT Certified Electronic Transcriber CET\*\*D 638

17

18

Veritext

19

200 Old Country Road

20

Suite 580

21

Mineola, NY 11501

22

23

Date: February 23, 2012

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